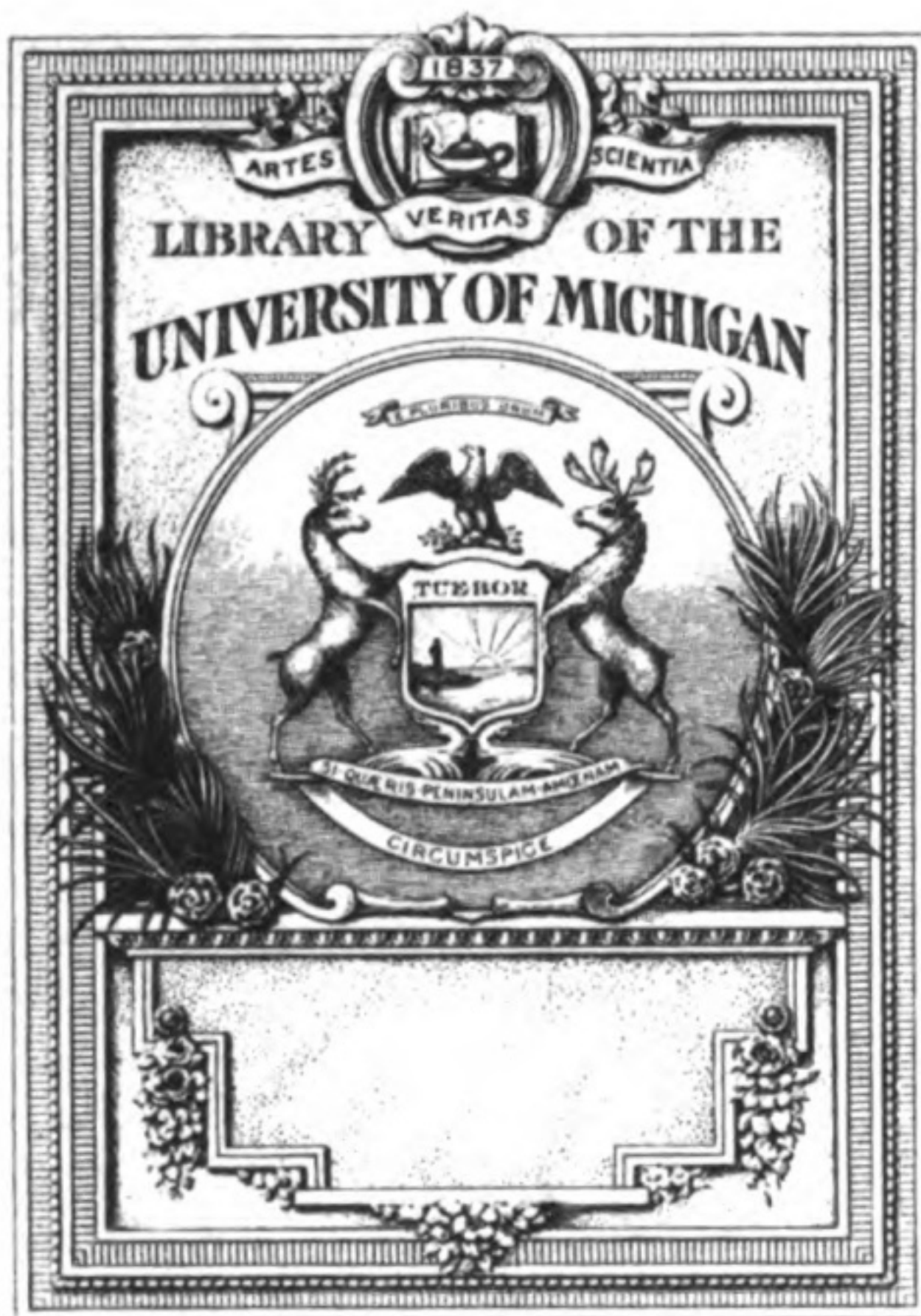


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Volume Twentieth

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Admiral Campbell

J. Storer Clouston

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The Scottish Historical Review

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The Public Records of Scotland

THIS book,¹ thrice welcome to the student and searcher of the Records, is also delightful and illuminating reading for the more general student who is interested in the Scotland of the past, or would add agreeably to his understanding of the systems of things which our ancestors have handed down to us. It is the substance, as we are glad to recognise, and as the author informs us, of the Rhind Lectures which he delivered in 1911. There is a special charm in the expeditious, and, at times, almost colloquial style of the lecture, when, at least, it is combined, as in the present case, with order in treatment and precision in statement.

In the first chapter, after answering the question, What is a Record? Dr. Thomson deals with the Records as a whole from the point of view of the general historian. In the remaining five chapters he treats of the several Records group by group, as not only a historian but a Record Student. He begins his historical narrative with the Inventory of the writs in the Royal Treasury in Edinburgh Castle made by three of Alexander III.'s clerks at that King's command in 1282. The Inventory affords us our only view, and only a partial view, of the muniments of Scotland in the Time of Peace, still in Scottish hands. Many writs the clerks report they had seen and sealed up in boxes,

¹ *The Public Records of Scotland.* By J. Maitland Thomson, LL.D. Pp. ix, 275. Demy 8vo. Glasgow: MacLehose, Jackson and Co., Publishers to the University. 1922.

coffers and bags. What this collection comprised they do not say, but that it included many important documents we know from later sources—it included, among other things, Exchequer Accounts of 1218. But they classified and catalogued about 170 writs which affected the rights of the Crown. Of that classification, Dr. Thomson observes in passing, that though there are classes for papers dealing with English matters, Norwegian, etc., there is no separate class for France. 'The ancient alliance had not yet been discovered.' Of the 170 or more documents separately noted, all have descriptive or distinctive titles except one, of which one of the clerks, 'William of Dumfries, whom we know from other sources to have been clerk of the rolls, made a mystery—he would not let his two colleagues see it till he had acquainted the King with the tenor thereof.' Whether these colleagues were ever informed of the contents of the document we do not know. But all that we can say of it to-day is that it was one of the papers placed in the 'English' section. Of the whole number, only seven are known to the author to have survived till the present day; and all of these, and the Inventory itself, are in the Record Office, London.

The earliest of the writs mentioned in the Inventory are 'a Bull of Pope Lucius III. (who died in 1185) confirming the liberties of the Scottish Church, and Richard I.'s letters of 1189, restoring the independence of Scotland. The inference is that the Records in the Royal Archives of Scotland in the time of King Alexander went back to the reign of William the Lion, if not to the very beginning of that reign.' (1165 A.D.)

It is significant that the title of this, Dr. Thomson's first chapter on the Records, is entitled their 'Adventures.' And the reason is not long to wait for. For the next information which we have of them is that they are in the hands of Edward I. of England, with clothes relics and other valuables which were found in the Royal wardrobe.

From the case presented by Dr. Thomson and the late Mr. Livingstone (Preface to his *Guide to the Public Records of Scotland*), whom he cites, it is clear that between the years 1291 and 1296 the great bulk of these ancient Records were carried off to London. Some Exchequer accounts and perhaps other Records were returned from Roxburgh or Berwick to Edinburgh for the use of the English Government established there, but of all that was taken to London far the most has now disappeared, and nothing at all has been returned, unless it be three pieces—belonging to

1292 and 1293—recovered by the Register House from unknown custody since 1810.

With Robert Bruce a new beginning of Records was made. In the estimation of Dr. Thomson, as of most other authorities, neglect has always been the greatest enemy of Records, but so long as Scotland's 'Auld enemies' did not get possession of the seat of government the Records were tolerably safe. The times of the Reformation, or, as Dr. Thomson puts it, the 'religious revolution,' and the civil wars of the early years of James VI. 'interfered with the records in so far as they interfered with the administration. But I do not know of any evidence of any destruction of records at that time.' On the other hand, he adds that, 'At this time we can place the first signs of awakening interest in the old records.' And well it was so, and that some of those early Record Students, like the first Earl of Haddington, made notes of the Records they read, for a new enemy in the shape of Oliver Cromwell was about to appear and, in 1651, to carry off the originals.

The books of only one Register are known to have escaped him. But how much was included in the remainder will never be known. It is true and well known that he returned 1547 volumes, and that 10 hogsheads of papers were returned after the Restoration; but it is also too true and too well known that 85 hogsheads were lost at sea on the way back, off the coast of Norfolk. A parliamentary enquiry was held in Edinburgh into the circumstances of the loss, and every one concerned was exonerated from all blame. How it came to be so cannot now be explained owing to the loss of some of the records of the evidence. But at the time it is probable that very few thought the loss a thing of much importance. When dealing with a period even as late as that which followed on the Union of 1707, Dr. Thomson observes that 'the history of the Records is a history of unavailing struggle by the few against the utter indifference of the many.' Still the strugglers have had their victories in recent times as well as indifference. In 1774 the foundation stone of a worthy Scottish Register House was laid. In 1806 the great Thomas Thomson, scholar, antiquary and organiser, was appointed Deputy Clerk Register.

In Chapter II. Dr. Thomson gives an interesting resumé of the few state papers now in the Register House, the principal of which are to be seen there in glass cases. Of one of these, the Declaration of 1371 that John, Earl of Carrick, afterwards

Robert III., was heir to the Crown, he does not omit to say in a footnote : ' This document is well known as an object lesson in restoration ; it was sent to a London expert faint but legible, it came back a piece of blank parchment.'

Turning from these separate documents to the registers of continuous sort, he discusses the contents of the first volume of the Record Edition of the Acts of Parliament, pointing out that little of it is strictly *record*, and that the regular Register of Parliament begins only in 1466, owing, almost without doubt, to the loss of the earlier records, from Robert I. onwards, in the shipwreck of 1660.

From the records of the parliaments he passes on, evincing as he proceeds an extraordinary familiarity with each of his successive subjects however great it may be in itself : thus the records of Conventions of Estates, conventions which behaved so like parliaments summoned *ad hoc* ; the Committee of Estates, whose volumes he observes have much which is not in print, and is still useful to enquirers into family history ; the records of the Lords Auditors of Causes and Complaints, and those of the Lords of Council and Session, and how much they resemble each other ; the Acts and Decrees of Council and Session—' a veritable museum of legal antiquities, and the happiest of hunting grounds for the genealogist and the local historian.'

It has been said that the great instinct of the librarian is to prevent people from getting at his books. But one of the deep impulses of Dr. Thomson's mind, constantly welling up and on the point of running over, is to stimulate research. We have a notable instance of this when he comes to discuss the character and consequences of our system of recording deeds in the books of Courts of Record. Of the contents of the Register of Deeds, otherwise known as the Books of Council and Session, he says :

' Of course the great majority of the deeds are bonds by forgotten people to forgotten people ; but the number of those which, from their contents, or from the parties to them, are of permanent interest is enormous, and many are of unique importance in clearing up some point of local or family history. In the new *Scottish Peerage* there must be thousands of references to the Register of Deeds, and it is certain that the contributors to that monument of industry did not, either individually or collectively, read the Register through nor do more than skim a few casual parts of it. I myself have been able to supply many

scraps from this source to several of my fellow-contributors, picked up, not by systematic study, but by casual observation.

‘From the Register of Deeds it is hard to say what one may not learn. We may find there unexpectedly the contract for the building of a historic bridge or a historic castle; or, it may be, the setting up of a parish school, with details of the modest inducements offered to the first schoolmaster; or the contract for the building of a church or the purchase of a peal of bells; or an arrangement between the patron of a living and his presentee, sometimes of a dubious character; or a contract for raising a regiment of Scotsmen for service in a foreign country. There are many deeds relating to trade, especially the grain trade; apprenticeships with all sorts of curious conditions; alliances contracted to foster feuds; letters of slains meant to quench them, an intermarriage not infrequently thrown in as one of the conditions of peace. Marriage contracts, of course, are amongst the commonest, including some between high personages. The contract between Queen Mary and Bothwell is there upon the record, but the original signed by the parties has disappeared.’

Again, he says: ‘The Register of Deeds itself is an inexhaustible store of information about the private life of our forefathers; a social historian ought to read it through. The original deeds preserved constitute a collection of memorials of every Scotsman of modern times of the respectable classes, and of many others. From experience I should say that at least one signature of every man in any way prominent who survived 1580 could be found there.’

The Books of Council and Session, as the books of the supreme court of record, contain the greatest and most important collection of deeds. But masses of similar deeds, though perhaps of lesser importance on the whole, are to be found in the books of the former Commissary Courts and Courts of Regality, and in the still existing books of the Royal Burgh Courts, and, most of all, in the books of the Sheriff Courts. All these are noted in their turn, but Dr. Thomson utters a word of warning against too implicit trust in the contents of the Register of Probative Writs down till the introduction of the Act of 1868. Before that date the rules of the Register, under which a writ once registered was returned to the owner, provided too convenient a way of getting upon record deeds the originals of which could not bear expert examination.

Dr. Thomson presents his readers with an interesting and lucid account of the old forms of legal diligence for the recovery of debts; and how the diligence of the civil courts, which extended to the debtor's property only, was inferior from the creditor's point of view to that of the former Church Courts which extended not only to the debtor's property, but to his person. This leads him to the consideration of the rise and development of the system of hornings—a consequence of the abolition of the Courts of the Church; and the establishment of the Register of Hornings and Inhibitions, so 'rich in evidences of family alliances and quarrels, and particularly of conjugal quarrels.'

His third chapter is concerned with the Records of the Chancery, the Treasury, and the Household, and begins with a learned and intimate consideration of the forms and order of Chancery in England and Scotland, and how the development in Scotland was in the direction of the Charter. He then brings before us in their turn: the Great Seal Register; the Great Seal Charter and the dating of it; the introduction of the first prerequisite for such a charter, the warrant under the Privy Seal, 'the key and safety of the Great Seal,' dating at least as early as the beginning of the reign of John Baliol (Dr. Thomson's date for the Cambridge MS.); the later introductions of the Signet, and the Signature or sign-manual, probably before 1497, as checks on the Privy Seal; the possibly unique 'Quarter Seal' or testimonial of the Great Seal, really a half-seal; the mysteries of Responde Books, Precepts and Instruments of Sasine, and Retours.

In his opening chapter Dr. Thomson observes that to us of to-day 'a record may be interesting mainly from scribblings on a fly-leaf or caricature sketches on the margin.' A chapter or more from his learned pen on the bye plays of keepers and clerks would probably be one of the most interesting and entertaining, although, perhaps, a somewhat unexpected product of a life spent in a solemn Record House. But in the book before us the author concerns himself with the records alone, and with his decanting they need no bush.

From Retours he proceeds to the Exchequer Rolls and Treasurers' Accounts, with all their varied information—social, foreign, trade, and the daily life of our sovereigns and their households; the less known Accounts of the Masters of Works, the publication of which he 'earnestly hopes' may soon be authorised; the Inventories of Queen Mary's Jewels, 'so

admirably edited by Dr. Joseph Robertson'; the Account Book of the Royal Household, and the book of purchases; the *Depenses de la Maison Royale* of the time of Mary of Guise and her daughter Queen Mary. 'Dr. Hay Fleming is, I think, the only historian who has yet utilised this source,' but it 'may some day prove a rich mine in the hands of an enquirer into economic history.' He closes the chapter with a notice of a record of a different sort—the Treasury Register from 1667 till the Union—'chiefly valuable as the best source of information for the conduct of military affairs during the period.'

The Land Registers and the Notary Public are the subjects of the fourth—in some ways the most important chapter in the book. There Dr. Thomson traces the stages through which the peculiar system of land registration which was established in Scotland was developed out of the system of copyhold which previously prevailed in Scotland in common with England.

The critical turn by which the practice of Scotland left the lines of the older system, was taken when sasine of lands with a notarial instrument on the transaction came to be considered as good as sasine vouched for by entry in the books of the superior—it might be only the court book of the manor. The development also of the symbolical idea of sasine by delivery of earth and stone on the lands themselves, and an allowance of subinfeudation and an acceptance of the civil and the canon laws, all contributed to the substitution of the Notary. But the notarial instrument, which began by superseding the older system of registration in the books of the superior, was found in time to be at the best incomplete as an evidence of title without being, itself, entered on a better register than the Notary's own protocol book—hence the registers of sasines, registers thus of notarial instruments. So it is that in Dr. Thomson's words, 'the forerunner of our land registers was the notarial instrument.' And his account of the Notary Public in all his varieties—Apostolic, Imperial, Apostolic and Imperial, Imperial and Royal, and so on, as that functionary appears in Scotland—so differently from the limited appearance allowed him in England—is one of the most valuable and entertaining parts of a book which exhibits these qualities in an exceptional degree in every part.

Chapter five is devoted to Ecclesiastical Records. The Episcopal Registers of England, 'a mine of history, secular as well as sacred, and the best of all sources of information as to the private life of our ancestors on its religious side,' have no

equivalents in Scotland. Dr. Thomson is not able even to say that we ever had such things. It is not necessary to suppose that because the old Church in England had an institution that Church in Scotland had it too. English ideas may have had great attractions to Scottish ecclesiastics of several periods, but the desire to be an exact copy of England in anything is quite modern. All that Dr. Thomson will say is that the muniments of the Sees of Glasgow and Dunblane, carried off to France by the last Roman Catholic Bishop, 'may have included records of the sort—if so the French Revolution has probably made an end of them.' There is no evidence that such registers existed in any of the other dioceses. But Church Records of other sorts are by no means non-existent, and the character of the bulk of those that have survived is rather destructive of the popular cry about the 'fires of the Reformation.' We have a rather imposing list of Chartularies and Charter Collections of the former bishoprics and monasteries, mostly now in print. There is the Protocol Book of the Chapter Clerk of Glasgow, the book most like of any of our possessions to an English Episcopal Register. We have a list of the Churches dedicated by Bishop Burnham, and a tract of some pre-Reformation years of the Register of the Official of St. Andrews and of three several Registers of Wills—those of St. Andrews, Dunblane and Glasgow. But as Dr. Thomson observes, Joseph Robertson's *Statutes of the Scottish Church* is a collection made from various sources. There are also some scattered records of early taxation of benefices.

As to the registers of wills just noticed, it might perplex a modern to understand how they came to be classed along with Church records, but anything connected even remotely with death-bed was claimed, among other things, by the pre-Reformation Church as within its jurisdiction; and, as Dr. Thomson says, 'it was the Official's duty to see that, even if there were no legacies to pious purposes, a suitable sum should be spent on prayers for the soul of the deceased—besides there were the dues to pay—the *quota* (in Scots the quot).'

Dr. Thomson then explains the rise and work of the Commissary Courts, which in 1563 took the place very much of the former Church Courts, and were continued till 1876.

The confiscation and other alienation of the property of the Church on the Reformation, and the successive measures for a re-settlement on it of a small portion of that property, produced a new set of records relating to benefices, stipends, etc., beginning

with the Book of Assumptions of the thirds of benefices, and ending, we may say, with the records of the Courts of Teinds. Of that Court the earlier records were destroyed in the great Edinburgh conflagration of 1700. But they still include, 'among other matter valuable for local history, a volume of statistical accounts of various parishes belonging to the year 1627. Fortunately, most of the Scottish local historians being ministers, historical study does not suffer appreciably' by these records remaining, as they do, in the Teind Office.

The records of the post-Reformation Church Courts, Assemblies, Synods, Presbyteries and Kirk Sessions are, so far as they still exist, in the possession, as a rule, of the Church. But the more important of these records that existed in 1651, were, as Mr. Livingstone tells us (*Guide* xvi) transferred in that year for safety to the Bass, were captured on the surrender of that fortress in 1652, and were, like the public records, transported to London. Since then all trace of their existence has disappeared. If returned in 1660 they may have been lost with the *Elizabeth*, or survived shipwreck only to meet destruction in the great fire of 1700, in which it is believed that various Church Registers, as well as those relating to teinds, were involved. Other registers relating to the Church were entrusted, during the Civil War, to the Earl of Balcarres, found their way after various transmissions to the library of Sion College, and, having been produced before a Committee of the House of Commons on Church Patronage in 1834, perished, while lying in the committee rooms in the fire which overtook the Houses of Parliament in October of that year.

As is well known, the Registers of Births, Baptisms, Banns, Marriages, Deaths or payments of Mortcloth dues, kept by the churches for Church purposes before the State concerned itself with registering any of these things were called up by Act of Parliament in 1855, to the Register House, Edinburgh, for safe custody. From the Registers of Baptisms Dr. Thomson produces some curious statistics on single and double baptism names. From the Registers of Marriages he cites some remarkable entries. On the Marriage Registers as a whole he makes the following note: 'At the present day, if one peruses the marriage notices in a Scottish paper in May, one notices a remarkable paucity of marriages, and a great rush at the beginning of June. And it is believed to be traditionally unlucky to be married in May. Whatever may have been the

case in Italy in the days of Publius Ovidius Naso, the old registers are distinct evidence that no such belief prevailed in Scotland before the nineteenth century. May in that respect is about the average of other months.'

It is hard to say whether Dr. Thomson's historical sketch of the office of Sheriff or his section on the Scottish Burghs is the more interesting part of his last chapter, which is assigned to Records not in charge of the Lord Clerk Register. It is remarkable that notwithstanding the extreme antiquity of the office of the sheriff, no sheriff court records of a date earlier than the sixteenth century exist. But the institution of heritable sheriffships, with powers to the sheriffs to appoint their own deputies, was against the chances of the preservation of records, and perhaps against the chance of very orderly records ever having been made.

On one of the special branches of the sheriff's records, that of the fiars, Dr. Thomson tells us, what must be news to most people, that 'it is certain that in older days the fiars were struck, not before the sheriff, but in the Church Courts.' It is a very general opinion that nothing more inequitable than the present system as it is worked in some parts of the country could easily be devised.

The paragraphs which Dr. Thomson devotes to the Burghs begin naturally with the most ancient Court of the Four Burghs; and from the records of some of the individual burghs he gives his readers several illustrations of the strong burghal spirit which characterised their communities.

Someone said once that an educated man is one who knows everything about something and something about everything. Thinking on these lines, we realise that the author of this fascinating book, unrivalled record-expert though he be, never appears in it as a whit more the specialist in the records than the master of the wider subjects of law and history. This is the charm and the value of the book.

Dr. Thomson in his long official career has played a great part in the business of placing the contents of the Registers within the reach of the public. The volume now before us has been written in his leisure moments. It also is a most important work, a work compact with the learning and the judgment acquired through many years, a work such as only a veteran could write, and that will attract and guide the right student to the study and love of the records.

J. H. STEVENSON.

The Admiral of Scotland

FEW aspects of Scottish history have been more neglected by historians than that relating to the regulation and control of the seas which surround her coasts. It is a truism to say that Scotland, at any rate until the Act of Union had conferred on her the benefits of freedom of trade, never was a great maritime nation, a fact attributable to her geographical position in Europe, combined with the dominating sea-power of England. Yet with her extended coast-line the sea could hardly fail to play a striking part in her history.

From the earliest times England had claimed the sovereignty of the 'Four Seas,' namely, the English Channel, the Irish Channel, the North Sea, and the seas surrounding Scotland on the west and east. As regards the Scottish seas at least, this 'sovereignty' was merely a pious aspiration, but elsewhere it was substantial, as is illustrated by the recognition by the Dutch in the Treaty of Westminister of 1674 of the English sovereignty in the seas which extended from Cape Finisterre to Stadland in Norway; and as regards Scotland it was so far a reality that until the Union of the Crowns the Straits of Dover were almost constantly closed to Scottish shipping. To this English preponderance must be attributed the fact that the Scottish staple port lay in Flanders, that her foreign trade lay mainly there and in the Baltic, and that such trade as existed with France and the south of Europe proceeded from the western ports around the west coast of England rather than from the more populous eastern ports through the straits of Dover. Nevertheless the interests of Scotland in the sea were considerable, and regulation and control centred in the office of Admiral.

The title of Admiral is of eastern origin, being akin to the word 'Emir' and was introduced to Europe by the Genoese, first appearing in France in 1249 and in England in 1300. In Scotland the earliest holder of the title appears to have been

the second Earl of Orkney who died in 1417. It would be perhaps difficult to assign its introduction in Scotland definitely to French or to English influence. The relation of the countries in the Middle Ages would indicate a French origin, but the functions of the Admiral and the practice of his court approximated closely to those of England. He may be best described as the chief executive and judicial officer of the Crown upon the sea, his jurisdiction extending to the high-water mark and therefore including such subjects as harbours, piers and sea-walls. In this respect he differed somewhat from the Admiral of England, whose jurisdiction ceased at low-water mark, except in so far as the fore-shore was from time to time covered by the flow of the tide. In early documents he is styled variously the 'Greit Admiral,' the 'Kingis Admiral,' the 'Admiral of the kingdom' or the 'Admyral generall kingis flot.' In the seventeenth century, however, in conformity with the English practice, he came to be known as the Lord High Admiral. The office was generally granted upon a heritable title, and the importance with which it was regarded is indicated by the fact that it was generally conferred on someone closely related to the Crown. One of the earliest Admirals was the Duke of Albany, who held office from 1475 to 1483. From 1488 it remained with the Earls of Bothwell until their forfeiture in 1567. After being held for a time by Francis Stewart, Earl of Bothwell, a natural son of James V., the office was granted heritably to the Dukes of Lennox, who held it till 1672, when it reverted with the estate to Charles II. as heir of the last duke. Charles granted the office to his brother the Duke of York, who already held the Admiralty of England and Ireland. In 1680 when the Dukedom of Lennox was revived in favour of Charles' natural son, the Duke of Richmond, the Admiralty of Scotland was bestowed with it under reservation of the life appointment of the Duke of York. The office was bought back by Queen Anne from the Duke of Richmond, and on the Act of Union was merged in the new office of Admiral of the United Kingdom, which was thereafter executed by Commissioners.

Being an officer of the Crown and closely associated with the exercise of the royal prerogative, the Admiral, both in his judicial and executive capacity, was directly subject to the control of the King in Council rather than to that of Parliament. He almost invariably attended meetings of the Privy Council, and when, on the Union of the Crowns, the Duke of Lennox

proceeded with the Court to England his place in the Council was frequently taken by his deputy the Judge Admiral, and there are even instances of the attendance of the Clerk of Admiralty.

His judicial functions were exercised through a deputy known as the Judge Admiral and subordinate admirals depute. Within its jurisdiction his court was at once a court of instance, a prize court, and a criminal court. Foreigners as being under the protection of the King were regarded as peculiarly subject to its jurisdiction, and it applied the international law maritime as opposed to the ordinary municipal law of the land. In addition by usage the Court also enjoyed a wide jurisdiction in purely mercantile causes in which it applied the law merchant. In spite of the statutes which were passed to elucidate it, the extent of its jurisdiction was obscure and led to frequent conflicts with the Court of Session. In these the Privy Council endeavoured to act the part of mediator, as well as on occasion assuming a power of revision over its decisions.

The executive functions may be broadly distinguished according as they were exercised in war or in peace. In war, contrary to the practice in England, where the Admiral when available generally commanded the fleet at sea, the Scottish Admiral seldom exercised his office afloat. For this the reason no doubt was that the Scottish Navy was never maintained as a permanent establishment of any strength. As occasion demanded it was recruited by the commissioning of ships of private owners and it was customary for it to sail under command of a practical seaman of experience. This method of commissioning a fleet was characteristic of the Scottish Navy, and its insignificance as a permanent establishment may be gauged from the fact that, when by the Act of Union it was joined to that of England, it contained three vessels only, of which one was classified in the new British Navy as a fifth-rate and the two others as sixth-rates.¹ The Admiral acted as the 'generall lieutenant to the Kingis Grace of all armies and companies of men of weir that sall be collectit and reikit to the sea.'² He was responsible for outfitting the ships with munitions, victuals, artillery, harness, etc., and for supplying them with their proper complement of 'pulderis, paveis, and speiris'² in proportion to their tonnage. The captains of the ships taking part in the expedition were required

¹ *Old Scots Navy*. Navy Records Society.

² Balfour's *Practiques* : Sea Lawis.

to take an oath of fidelity to him, and the ships 'to quhomsoever persounes they appertene sall be haldin to beir the banners, standartis and enseinzies of the said Admirall.'¹ On the conclusion of the expedition the munitions, artillery, anchors, etc., reverted to the Admiral to be reserved for future use. It was the duty of the Admiral to convoy trading vessels at a price to be mutually agreed upon and to issue passports and safe-conducts as required. Fishing vessels also might be protected at a price and no ship might enter harbour during war except by license of the Admiral.¹ Another department of his wartime duties lay in maintaining a watch upon the coast for which all men residing within a mile of the sea were liable. For this purpose a system of signalling by 'smook and reik' by day and 'signis of fire'¹ by night was used, and the Admiral was authorised to hold a wappenschawing twice a year. It was doubtless to these duties that the minute of the Privy Council of 1588—the year of the Armada—refers which bears that the Admiral was ordered 'to attend upon his own charge of Admiralty.'² Coast fortifications so far as lying within his jurisdiction also fell to his charge, and in 1632 the Privy Council granted the Admiral an export duty of 2s. per ton on salt and coal, on condition of his erecting and maintaining a fort on Inchgarvie.³ This grant appears to be an instance of taxation by the Privy Council on its own unconfirmed authority and is all the more remarkable in respect that in 1625 the Convention of Estates had declined to sanction an export customs duty on coal on the ground that it would be injurious to the mining industry.

In peace time the Admiral had a variety of duties. His first duty, and that for which in fact his office was originally created, was the suppression of piracy. This was the subject of frequent consideration by the Privy Council, who from time to time furnished him with money to fit out ships for the purpose. In addition he was required to suppress the sale of pirated goods 'upon the streame,' to prosecute the buyers of these and to restore the goods to their rightful owners. A second branch of his duties lay in the enforcement of the stringent regulations which existed as regards foreign trade. All goods shipped abroad required 'to be seen and considerit be the Admirall or

¹ Balfour's *Practiques*: Sea Lawis.

² *Reg. of Privy Council*, 1588, vol. iv. p. 308.

³ *Reg. of Privy Council*, 1632, vol. iv. p. 570.

his officaris gif they be forbidden gudes or not.’¹ Imports likewise were subject to his inspection, and in 1628 the Privy Council instructed the Admiral to arrest all French wines arriving at the port of Leith,² and again in the following year he was instructed to prosecute all importers of ‘Embden dollars’.³ It was for this reason that all commercial treaties with foreign nations were recorded in the Books of the Admiralty. Similarly the Admiral was charged with the enforcement of the quarantine regulations, as in the case of ships suspected of carrying plague. He appears to have had the right of search, and in 1668 he was instructed to apprehend all Scottish seamen in the service of foreign countries and to compel them to return and register in the Books of Admiralty under pain of being declared pirates.⁴ A third function was the custody and control of all wrecks and waiffs (*i.e.* derelicts) and of flotsam, jetsam, and lagan. These would otherwise doubtless have been immediately plundered on the spot by the local inhabitants; it was his duty also to adjudicate them to the rightful owners.

Another important function was the regulation of fisheries, which included not only the collection of the dues of the assise herring and the assise white fish from all fishing vessels, native and foreign alike, but also such duties as the prosecution of stealers of ropes and barrels from the fishing fleet and the prevention of the buying and selling of fish before they were brought to land. Other duties included the regulation of harbours and rivers below the first bridge and the prevention of the obstruction of navigation by the discharge of ballast. For these purposes the Admiral might appoint local deputies, and in other instances local and subordinate rights of Admiralty were granted directly by the Crown, such as that of Lord Bute in the County of Bute, of Lord Dundas in the Orkney and Shetland Islands, and of the burghs of Edinburgh and Glasgow in the Forth and Clyde.

The existence of these subordinate rights of Admiralty, together with the fact that the precise nature and extent of the dues and casualties of the Admiral were never clearly defined in his infestment, provided a fruitful subject of dispute. In 1592, in consequence of a representation made by the Convention of

¹ Balfour's *Practiques* : Sea Lawis.

² *Reg. of Privy Council*, 1628, vol. ii. p. 284.

³ *Reg. of Privy Council*, 1629, vol. iii. p. 3.

⁴ *Reg. of Privy Council*, 1668, vol. ii. p. 420.

Royal Burghs on behalf of the sea coast towns that the infestment of Francis Stewart, Earl of Bothwell, contained 'ane greit nowmer of strange clauses quilk wer nevir contenit in ony infestment gevin to ony admirall of befoir,' it was enacted that 'the admirall of this realme and his successouris in tyme cuming exerce nor usurp na jurisdiction nather zit exact nor crave ony kind of dewtie escheat nor casualitie bot according to that quilk wes usit to be exercesit or takin be the admirall for the tyme befoir the deceis of King James the Fyft of noble memorie.'¹ The irregularities, however, were not all on the part of the Admiral, and in 1633 a commission was appointed to report upon the duties and privileges of the offices of Admiral and Chamberlain, then both held by the Duke of Lennox, 'in respect that sundrie communities and other particular persones and judicatories have incroacht upon the saids officis of Admiralltie and chalmerlanrie.' In consequence of this report it was remitted to the Duke of Lennox to revise the Admiralty laws and enact new ones.²

In 1672 the Privy Council recommended that 'the ratis and pryces of all dues payable in the Admiralltie Court be regulat in tyme comeing.'³ The dues and casualties of the Admiral appear to have been the following :

(1) The 'Golden Pennie'; referred to in the course of a dispute between the burghs of Edinburgh and Leith in 1630, as 'the undoubtit richt and cheiff casualitie belonging to the Admirall,' and consisting of a 'rose noble off each schipp maid cost or sould (*i.e.* built, exchanged, or sold) within the wateris or landis off Leith Newhaven and Forth.'⁴—If this casualty was general throughout Scotland—and we know that it was exacted elsewhere, *e.g.* in the regality of St. Andrews,—it would seem to imply the existence at this period in the Books of the Admiralty, of a general register of shipping, as otherwise the transfer of property in ships could not be traced. In England such a register does not appear to have then existed and Lloyd's Register of Shipping, which is regarded as the parent of all other Shipping Registers, was not printed until about the year 1726.

(2) A tenth part of the value of all prizes, whether taken by ships of the Royal Navy or by privateers sailing under license

¹ *Jac. VI.* 1592, c. 79.

² *Car. I.* 1633, c. 33.

³ *Reg. of P.C.* 1672, vol. iii. p. 500.

⁴ *Reg. of P.C.* 1630, vol. iii. p. 660.

of the Admiral.—In the former case a certain proportion went to the Crown; in the latter, after deduction of the Admiral's tenth and the expenses of adjudication the whole of the remainder was divided in the proportion of $\frac{3}{8}$ to the owners, $\frac{3}{8}$ to the seamen and marines, and $\frac{2}{8}$ to the victuallers. Similarly the Admiral was entitled to a tenth of 'pillage,' *i.e.* articles under ten crowns in value, such as clothing, weapons, coins, etc., which were regarded as the perquisites of the seamen and marines, and to a tenth of the ransoms of prisoners. To enable the Admiral to adjudicate the prizes correctly their charter parties required to be presented to him together with two or three of the principal persons on board, and if the charter party had been destroyed the ship was regarded as a lawful prize. The Admiral, moreover, was entitled to have a representative on each ship of war to 'visie' the charter parties of the prizes, and it was forbidden to intromit with the prizes in any way until the Admiral had made his award.

(3) Wrecks, waiffs, flotsam, jetsam, and lagan.—By old Scots law all wrecks escheated to the Crown unless some living creature, either man or beast, was found on board, in which case the owner might claim the wreck within a year and a day, but this rule early became obsolete and it was the Admiral's duty to adjudicate in so far as the owners could be found. If no owner appeared the wreck became a casualty of the Admiral. Should, however, the wreck be the property of an enemy it was *res hostium* and so escheated to the Crown for whom the Admiral took custody; and on this ground the wreck of an Armada ship which the Earl of Argyll was engaged in salving in 1677, was held to have escheated to the Crown. In the case of flotsam, jetsam and lagan, $\frac{1}{3}$ went to the finder, $\frac{1}{3}$ to the Crown, and $\frac{1}{3}$ to the Admiral.

(4) The assise herring and assise white fish.—This duty, payable by native and foreign fishermen alike, illustrates the much more extensive views of proprietary rights in the sea which prevailed in early times. At the present day the Crown restricts its control of foreign fishing vessels outside the three mile limit to a limited power of regulation of the fisheries and that only in virtue of international agreement. The Dutch always vigorously contested this payment, but in 1636 agreed to a payment of £30,000 for the privilege of fishing anywhere in the North Sea. In England the duty amounted to a tenth of the value of the fish taken and the amount was doubtless the same in Scotland.

B

(5) Leases of local rights of Admiralty.—The Admiral was accustomed to grant such leases on occasion. Thus in 1612 the Earl of Argyll had a tack of the assise herring in the western seas, with the power of holding the courts necessary to enforce it,¹ and in 1626 Lord Lorne paid 500 marks for a similar privilege.²

(6) Payments for the protection of convoys and of the fishing fleet in time of war or disturbance.—The amount was a matter of private arrangement with the Admiral.

(7) Payments for issue of licenses, passports and safe-conducts according to a fixed scale.³

(8) Fines for the infringement of harbour and navigation regulations, *e.g.* for obstruction of water-ways by discharge of ballast.

(9) Duties authorised by the Privy Council for a special purpose, *e.g.* the duty of two shillings per ton on exported coal and salt for the erection and maintenance of a fort on Inchgarvie.

(10) Royal fish were treated as perquisites of the Admiral, *i.e.* whales above a certain size, and possibly also porpoises and sturgeon, which were regarded as royal fish in England.

The functions of the Admiral of Scotland appear to have lain to a large extent outside the framework of the constitution, in respect that they were exercised on the sea where the ordinary conception of territorial sovereignty could not be applied. His main importance perhaps lies in the fact that he personified those claims to proprietary rights in the sea which were so prevalent in Europe in early times, and which, though uncertain and undefined, were none the less real and important. In the sixteenth and seventeenth centuries it might be said that there was scarcely a portion of the seas surrounding Europe which were not the subject of a proprietary claim by one state or another. In modern times these have been largely modified and are generally confined in practice to a range of three nautical miles from the coast, but undoubtedly they still exist and are liable at any time to be revived in accordance with the incontestible doctrine that a state is entitled to control the sea to the extent which may be necessary for its own preservation.

A. R. G. McMILLAN.

¹ *Reg. of P.C.* 1612, vol. ix. p. 508.

² *Reg. of P.C.* 1626, vol. i. p. 371.

³ *Balfour's Practiques: Sea Lawis.*

The Orkney Pennylands

ON a previous occasion the structure and evolution of the Orkney townships were dealt with in some detail.¹ This present paper is to be read as an addendum to that essay, throwing a certain amount of fresh light on the question and suggesting a new conception of the evolution of those ancient 'towns'; a conception which does not contradict in any essential point what was said before, but rather takes things a stage further.

One particular feature of the township must first be recalled and emphasised. Its arable lands were seen to be of two sorts. (a) *Towmall land*, which lay in the form of 'towmall' or small fields close to the various houses. These towmall consisted of the best land and were not shared in runrig, but usually belonged entirely to one proprietor. If shared by two heritors, they were simply split into solid slices. (b) *Townland* or *Runrig* land, which was shared rig about by all the heritors or tenants of the town.

It was also mentioned that each town consisted of so many 'pennylands,' eighteen of these making an 'urisland' or ounce-land, and each pennyland consisting of a certain number of 'merklands' (originally 'merk's worth' of land), a number which varied from township to township. Into the difficult question of the etymology of the term pennyland, it is unnecessary to go in this paper. It is sufficient to know that for practical purposes it meant a taxable unit. The scatts, or ancient Norse taxes, were, in fact, the same generally speaking, for all the pennylands in the same parish (and pretty well the same all over the Isles), regardless of their varying value in merklands.

I

There is no doubt that during the period at all well lit by records (from the end of the fifteenth century onwards) the pennylands included the whole arable lands of the town, and so

¹ 'The Orkney Townships,' *S.H.R.* xvii. 16.

implicitly did the present writer accept this as a fundamental fact that one very curious bit of evidence, actually quoted in the previous paper, failed to open his eyes. A chain of evidence, however, of which this bit is the most important link, points now to somewhat different conclusions; namely, that *originally* the pennylands included the towmall land only, that this was the first nucleus of the township, and that, as the runrig lands grew up around this nucleus, they were at first regarded merely as an annex to the pennylands, and only gradually came to be counted as an integral part of them.

Since these conclusions throw a new light on the original character of the townships and on their subsequent development, and also on the origin of runrig land (in the Orkneys, anyhow), it is necessary to examine the evidence pretty carefully. In such a technical matter, it is difficult to be both clear and exact, and I apologise beforehand for inevitable shortcomings in these respects.

The particular piece of evidence just mentioned is the Perambulation of the township of Paplay in South Ronaldsay in 1677. In this deed each of the nine pennylands of which the town was composed was separately dealt with, and either apportioned to one heritor or divided among two, or even three. The first of these pennylands was described as the 'pennyland towmell, or hill back of Lalley,' and the sixth as, 'the next pennyland thereto called Straittie Towmell,' but the other seven were simply styled 'the pennyland' of so-and-so; though in dividing them the terms 'towmell' and 'back' were used several times.¹ Then, after finishing with these nine named pennylands or towmells, the record goes on: 'We went lykways on the townesland.'

I think that nobody reading this deed, and having no preconceived ideas on the subject, could doubt that, in the first place, 'pennyland' was a recognised description for each of these nine

¹ The 'hill Backs' (or 'balks') were strips of land, generally uncultivated, just outside the arable fields. In certain townships, such as Paplay, the houses were at the top border of the town, and hence the towmells and hill backs adjoined. The phrase 'towmell or hill back' is several times found, but in North Wideford, where it occurs, the towmells were specifically described as within the 'bow' (*i.e.* arable lands), while one house is specified as standing on 'the Balk without the bow.' Towmells and backs were radically different, except in the feature that neither were shared runrig but were held by one man intact. Hence when they adjoined, the combination was looked upon as one parcel. This, I now feel sure, is the real meaning of 'towmall or hill back.' In the former paper the opinion was expressed that, when this phrase was used, they were identical, but this, I am now convinced, is wrong.

parcels of towmall land ; and, secondly, that the townlands, or runrig lands, were (in Paplay, at least) regarded as distinguishable from the pennylands.

These inferences, indeed, are so inevitable that one is faced with one of only two possible alternatives. Either we have here a curious survival of an early system in which the pennylands consisted of towmall ground only ; or, if what was really meant was a distinction between the *towmall portion* of a pennyland and the *townsland portion*, then, for some reason or other, the towmall portion had become peculiarly identified with the term pennyland.

But there are other suggestive peculiarities in these Paplay towmall-pennylands. As a township in the course of generations became divided among portioners and broken up into shares of unequal size, the pennylands became sometimes amalgamated with one another, sometimes cut up. Thus one man would own 2d land, another $\frac{1}{2}$ d land, and so on. This was the case in Paplay, yet, in spite of this fact, we find the *towmall-pennylands* still retaining their individuality—a very surprising thing to find.

In consequence of this, we also find another quite remarkable peculiarity. Take one of the heritors, James Kinnaird of Burwick, for instance. He owned altogether in Paplay 1d land and 1 farthing land (*i.e.* $1\frac{1}{4}$ d land). But he got his share in three different pennylands ; $\frac{1}{2}$ d in one, $\frac{1}{2}$ d in another, and $\frac{1}{4}$ d in a third. And it was the same with several other heritors. This is an altogether exceptional and singular arrangement, besides being obviously inconvenient.

When one remembers that the *townslands* were not arranged in separate and distinct pennylands like this, but were distributed, rig about, to each of the nine towmall-pennylands in turn, these peculiarities argue a very ancient and tenacious association of towmall lands with pennylands, much more consistent with the view that the original pennylands were identical with the towmall, and that the townlands were a kind of annex.

So far, the evidence has only come from this township of Paplay. But there are two other records, both cited in the previous paper, which point to the same conclusion. In 1645 we find a certain 2d land in the town of Hoxa being divided into its two component pennylands, one of these being divided again into halves, and one-half being split into four equal portions. And again, in 1669, we get a pennyland in Lythes divided into four farthing

lands. In both cases this was done by straight boundary lines marked by march stones.

Now, when one comes to think of it, the driving of straight boundary lines through a maze of small fields held in runrig would be quite out of the question as a practical proposition. It would be like dividing a rambling old mansion into four or eight equal portions by parallel straight lines; the result being obviously to leave a portioner with, say, half a bathroom, two-thirds of a pantry, a fragment of a bedroom, and so on. Furthermore, it violates all the principles of the runrig system as exemplified in dozens of other records. In every case where runrig lands were divided, it was done on the rig about theory.

It seems certain, then, that runrig lands cannot have been included in these two cases, and that pennylands in the Paplay sense were meant: *i.e.* towmall-pennylands, which in Paplay actually were divided straight across into solid chunks, and not runrig.

Thus we see that in the seventeenth century the *word* 'pennyland' could sometimes mean a parcel of towmall land only; even though a proportionate share of the townland or runrig land was always attached, and though the compound of towmall and runrig was the area ordinarily reckoned a pennyland. So much is quite certain; and all the evidence just reviewed makes it seem probable that this limited use of the word was the original use, and not a mere distinction that had grown up latterly.

II.

All these three cases come from the island of South Ronaldsay, where this system of reckoning pennylands evidently remained in traditional use longer than elsewhere (assuming, that is to say, that it was really the ancient system). The difficulty in collecting further information is that the very fact of it being a mere survival, generally out of use, implies that few traces are likely to be on written record. A pretty exhaustive search has, however, disclosed in the case of two townships a series of definite and very curious facts, only explicable (so far at least as I can see) as survivals of the same old system.

These two cases are the townships of Clouston in Stenness and Linklater in Sandwick, both in the West Mainland. In each instance we find these peculiarities. The township had a *nominal*

rental value, arrived at by reckoning it as so many pennylands, each consisting of so many merklands, and each merkland rented at one meil of malt.¹ In each case, however, there was also *extra land*, which went with the 'head house' (the ancient 'principal mansion'), and this extra land and head house belonged to one particular heritor who represented the eldest branch of the odal family owning the township.

In each of these cases this heritor's property was reckoned, in several official documents, as simply his share of the *nominal* township. But in each case, on one occasion, when the true value of his estate was made up for testamentary purposes, he was credited with far more pennylands than this share came to. And finally, the actual value of his property (as disclosed by the testament), though greater than his nominal share of the township, was considerably less than it ought to be after all these extra pennylands were included.

The question is: What were these extra low-value pennylands?

In Clouston the precise facts were these. It was a 6d land, having three merks to the pennyland, or 18 in all. Around the old head house there still lay in the seventeenth century a kind of preserve, not shared by the other heritors in the town (by that time much divided), and not included in the 18 merklands.² This head house and preserve belonged in the first half of that century to Richard Clouston of Clouston, and the lands he held in the township were officially reckoned as one pennyland.³ In 1636, however, they are twice described in the testament of his mother as 'four pennyland,'⁴ while estimates from the crop both in this testament and another in 1664 agree in making them rather over two pennylands.⁵ Moreover, he sold part of his

¹ A meil was a measure of weight (just under 300 lbs. when applied—as in this case—to malt). It was divided into 6 settens. Rents paid in kind were almost always expressed in this way, and a parcel of land was frequently described as 'ane meil,' '2 meils, 4 settens,' etc.

² See *S.H.R.* xvii. 30, though the real explanation was not then apparent.

³ Valuation of 1653 and various Clouston deeds. He owned $2\frac{1}{2}$ merks and rented $\frac{1}{2}$ mk.

⁴ All the testaments cited here are in the General Register House.

⁵ The method of estimating land from crop is based on Captain Thomas' calculations of the produce in beir of an average pennyland of four merks ('What is a Pennyland?' *Proc. Soc. of Ant. Scot.*, April 1884). A fourfold return of beir was always assumed in these testaments, and, to estimate the land, the seed sown must be supposed to be all beir. Each 5 meils or 30 settens of produce will then

property in 1664, and yet it continued thereafter to be, officially, exactly the same size.

In Linklater a very similar state of things existed. It was a 3d land, with 4 merks to the pennyland; 12 in all.¹ In the latter part of the seventeenth century it was all acquired by Robert Richan, and a Richan sasine of 1738 describes it as consisting of 12 merks, amounting in rental value to 12 meils (which accounts for the whole *nominal* township), *plus* '7 meils under the House of Linklater'; this last being an entirely separate item. Dispositions by Alexander Linklater of Linklater in 1664 and 1667 prove that he owned this head house with its 7 meils, and also 1d land, or 4 merks; the latter being his official share of the township and the 7 meils an extra. His father, Andrew Linklater's official share, was also 1d land in the 1643 valuation of Sandwick.

But the testament of Andrew's wife, who died in 1631, gives the land occupied (*i.e.* farmed) as consisting of '3½d land of Linklater,' some land in the neighbouring township of Scorwall, and '5 farthings in Linklater' (these last being the 1d land he owned and one merk rented).

Thus in both cases we find a head house accompanied by a special parcel of extra land, while the property that included these was reckoned in pennylands in two different ways; the smaller valuation being its share of the nominal lands of the township, and the larger to be accounted for—how? Surely, one would say, by the extra land. It can scarcely be a couple of mere coincidences when we find extra land and extra pennylands going together. And, what is a very significant fact, the extra land lay under the ancient head house, precisely where the small towmall-pennylands, found in South Ronaldsay, should be looked for.

Without the guidance of the South Ronaldsay evidence, these two townships were for long complete enigmas to me. On the surface the recorded facts flatly contradict one another, and yet they are much too explicitly stated to be explained away. Besides,

represent a merkland. Tested by a large number of testaments, where the amount of land was actually known, this method was found to give a remarkably accurate estimate.

¹ The Linklater references are partly from the Register of Sasines and other records in the Register House, and partly from records in the author's possession. The valuation of Sandwick in 1643 (G.R.H.) and a sasine of 1654 give the number of merks in the pennyland.

each set of contradictory facts does not depend upon one document, but upon several. But, with this guidance, what happened is perfectly comprehensible. Around the first house, or houses of the town, lay the original towmall-pennylands; and only later were the runrig lands counted as an integral part of them. In the South Ronaldsay examples, the word 'pennyland' was still applied to the towmall only. In the West Mainland cases, the original small pennylands (or part of them, it may be) remained, as it were, glued to the head house; while the shares of the runrig land, once attached to them, had come loose. And as these shares formed much the greater portion of the township, and probably included part of the old towmall-pennylands, they had usurped the name. So that there were two kinds of pennyland side by side.

In the Clouston case the property in question evidently consisted of 4 such towmall-pennylands, in addition to 1d land runrig¹; and in the Linklater case it was 3 such nucleus pennylands and 1d land runrig.² But in both cases the official valuation took cognisance only of the runrig or townlands, since they in themselves completed the nominal value of the town.

The alternative, suggested in the South Ronaldsay cases, that there was merely a distinction drawn between the towmall and townland portions of the pennyland, will not do here. Indeed it was a strained alternative in any case, and not in accordance with the wording of the deeds. Thus the only conclusion that seems tenable, in the light of all the evidence, is that the original pennylands were simply the towmall portion of the town.

Another conclusion, that appears at least highly probable, is that originally the 'merklands' were confined to the runrig land, just as the pennylands were to the towmall. This seems likely from the fact that both in Linklater and Clouston the full number of merks are found apart from the towmall-pennylands; and it would also account very well for certain curious variations

¹ It is possible that it might be 3 small pennylands and 1d land runrig, thus making up 4d land; but there are documentary facts suggesting the other reading. The point, however, is immaterial.

² The odd $\frac{1}{2}$ d land, making up the '3 $\frac{1}{2}$ d land of Linklater,' probably lay in 'Linklater in Scabra,' a parcel of land thus styled in the adjoining township. These Linklaters certainly owned land in Scabra, and though most of it was let to tenants, the Compt Books of 1654 and 1659 prove that they farmed a small portion of it themselves. Moreover, in the Richan sasine of 1738 a parcel in Scabra amounting to 1 $\frac{1}{2}$ farthings is included in the same item as the 12 mks. of Linklater, and was occupied by the same tenants.

in the value of merklands,¹ the variations being due (on this theory) to the extent to which the towmall land was incorporated with them and the period at which the incorporation took place.

III.

In the light of this fresh survey, we can now picture the evolution of a typical Orkney township somewhat on these lines. In its earliest stage there would be the *Tún*, or homefield, containing within it the homestead, and surrounded with a turf dyke.² Outside would be the beginnings of what came to be called the townsland, but the *tún* alone would be measured or valued, in pennylands. This *tún* I take to be the original and true 'auld bow' (or 'bu') referred to in the previous paper as a puzzling and elusive term.

The next stage would be a division among the heirs of the family, who would each get a *tún-vøllr* or portion of the homefields, the origin of the word towmall or tumale.³ With this would go a proportion of the growing townslands, shared runrig with the other heirs. And with regard to this method of land sharing, it seems very probable that the difference between it and the solid-slice sharing of the towmall ground arose from the fact that in the old *tún* all the land was so good, and had been so long cultivated, that one part of it was practically as good as another; whereas wide differences existed in the townslands outside it. Hence, for the sake of fairness, these last were shared rig about.

In a few exceptional cases the runrig share attached to a certain pennyland seems to have been distinguishable from the rest of the townsland.⁴ There can be little doubt, however, that this was only a private arrangement for the sake of convenience, since there are various references to the custom of holding the

¹ These variations had begun to occur pretty early. For instance, on 26th February, 1593, half a merkland in Linay, in Grimeston, Harray, was excambed for a whole merkland in Leagair, in Outer Stromness. (Auchinleck's *Protocol Book*, G.R.H.)

² I am assuming that *Tún* was used in Orkney in the Icelandic sense of the enclosed infield, and not in the Norwegian sense of the homestead (see *Oxford Dictionary*). The very usage of the word 'town' in Orkney, always for a township and not for a single farm, and the natural presumption that this is how they once used 'Tún' seem to make this certain.

³ This was the late Dr. Jacobsen's derivation.

⁴ *The Orkney Townships*, p. 31.

townsland in 'planks,' or solid portions, by means of which the different householders frequently mitigated the evils of pure runrigism. Every perambulation and decree of division on record makes it plain that no house had any *right* to such a privilege, but must take its rigs 'as they fall' throughout the whole townsland.

Later on, as portioners multiplied, other houses would be built quite outside the auld bow, and they would get their tow-malls 'before the door,' as it was often phrased. These were not actual slices of the old *tún*, but *equivalents* for their shares of it; the *tún* itself gradually breaking up and being thrown into the runrig lands, and the term 'pennyland' coming to include the merklands of the townslands.

At last all that was left of the *tún*, in most cases, would be the towmall attached to the original house—or any other house *inside* the *tún*. The whole arable then came to be called the 'bow,' or even (but quite wrongly) the 'auld bow'; though when the old *tún*, or any considerable portion of it, happened to survive, one still finds the term applied in its true sense. Or yet again, as the old significance of the term became forgotten, one finds it applied to the dyke that surrounded either the real auld bow or the whole arable.

It is, unfortunately, in the highest degree unlikely that any direct proof relating to the original structure of these townships will ever be found, but the origins as thus sketched seem to be the logical conclusion from all this varied assortment of evidence.

J. STORER CLOUSTON.

Five Letters of James I

THERE lies in the Register House a sheet¹ containing the drafts of five letters written by James I. on January 30th² of a year during his captivity, which has never been satisfactorily fixed.

The letters are addressed (*a*) to the Regent Albany, (*b*) to Douglas, Dalkeith, and Dunbar, (*c*) to the lords of Graham, Erskine, and Ardrossan, (*d*) to ten others (not named), (*e*) to two others. The tenor of all alike is to urge the Regent to take effective steps to secure the King's speedy release.³ They are printed *in extenso* in the *Red Book of Menteith*.⁴

Various writers have suggested the following dates: the Register House has 1423-4;⁵ Sir William Fraser, 1415-6;⁶ Mr. J. H. Wylie implies 1412-3;⁷ Mr. J. T. T. Brown says 1416-7;⁸ Mr. Burnett, early in the reign of Henry V.⁹

It is immediately obvious that the first of these must be wrong, since the letter to Albany, 'most dear and best belufit eme,'¹⁰ cannot have been written later than Albany's death in 1420.¹¹ It cannot, indeed, have been later than the release of Murdach, Earl of Fife, since it is sealed 'with our proper sign manual and

¹ *State Papers*, No. 12.

² 'The penultyma day of Januaruar:' (letter to Albany).

³ E.g. 'That ye make execution for our deliverance' (to Albany); 'We prayis yhow with al our hart to labore for us and our deliverance' (to Douglas, Dalkeith, and Dunbar).

⁴ Sir W. Fraser, *Red Book of Menteith*, i. 284-6.

⁵ *Calendar of State Papers*, No. 12.

⁶ *Red Book of Menteith*, i. 284.

⁷ J. H. Wylie, *History of England under Henry the Fourth*, ii. 403.

⁸ *Glasgow Archaeological Society Transactions*, iii. 162.

⁹ *Exchequer Rolls of Scotland*, iv. p. lxxviii, note 3.

¹⁰ This formal mode of address, with which the letter of James to Albany commences, is misinterpreted by Sir W. Fraser, *op. cit.* p. 288, as a token of particular affection.

¹¹ *Exchequer Rolls*, iv. lxxix.

signet and with the signet of our welbelufit cosyne of Ffyffe.' ¹ Now, Murdach was delivered from the Tower in May, 1415, ² and although his 'felonious capture and abduction' ³ in Yorkshire delayed his final exchange for Henry Percy till the following spring, ⁴ there is no evidence that he was brought back to spend the interval in the company of James in the south of England. In any case, even if Fife's signet were available on January 30th, 1415-6, that day is impossible for the letters, which are dated at Stratford, while James was taken to the Tower of London on the 28th of that month, and was kept there at least till the following August. ⁵ Thus the conjectures of Sir William Fraser and Mr. Brown are ruled out, and the latest possible January is that of 1414-5.

The *terminus a quo* may be found in connection with John Lyon, the King's 'trast and well-beloved chaplain,' ⁶ who bears these letters after having 'now of late' ⁷ taken others. Lyon seems to have first come to England, as 'chaplain to the Lord of the Isles,' in June, 1411 ⁸—a critical period in the fortunes of that noble. Very possibly Lyon was sent with an appeal to the King in person against the Regent's acquisition of Ross for his family, or perhaps to beg from Henry IV. such assistance as the Earl of March had obtained. In any case, he would have imbibed from his patron some such strong hatred of Albany as is shown in these letters. Owing, perhaps, to the result of Harlaw, Lyon does not appear to have returned to the Lord of the Isles, but to have entered the service of James, ⁹ in which he remained for many years, frequently visiting Scotland on his behalf. ¹⁰ The earliest possible date for the letters, then, is January 30th, 1411-2.

¹ Letter to Albany. Sir W. Fraser, *op. cit.* i. 283-4, observes this, but still thinks January, 1415-6 possible. For the constitutional importance of these seals see J. Maitland Thomson, *Public Records of Scotland*, p. 67.

² Bain, *Calendar of Scottish Documents*, iv. 859; British Museum, *Cott. Vesp.* F vii. 127-130.

³ Bain, iv. 863.

⁴ Bain, iv. 873; *Ord. Priv. Council*, ii. 188-9.

⁵ *Issue Rolls (Pells)*, E.403, 4 Henry V. No. 624, in Record Office.

⁶ Letter to Albany; the others contain similar expressions.

⁷ *Ibid.*; the others refer to answers received.

⁸ Bain, iv. 806; *Rotuli Scotiae*, ii. 196-7.

⁹ *Rot. Scot.* ii. 197.

¹⁰ *Rot. Scot.* ii. shows safe-conducts for him again in 1412 (p. 200), 1416 (215), 1417 (222), twice in 1418 (223), and 1419 (225).

We are left to decide the most likely year of the four within these limits. All our modern authorities (except Wylie) agree in assuming that Henry V. was on the throne, and is the King of England, whom James has 'fundyn so gracious that in him is nothing to amend.'¹ They produce, however, no evidence to justify this identification, and the words are obviously surprising as a description of the king, who signalised his accession by clapping James into the Tower.² Is it not much more probable that the gracious king was Henry IV., and that the immediate stringency of Henry V. was part of the general reversal of his father's policy?³ This hypothesis of leniency on the part of Henry IV. and his minister, Archbishop Arundel, at the end of the reign (*i.e.* after November, 1411),⁴ is strengthened by the King of Scots being, on 14th May, 1412, at comparative liberty somewhere near Southampton, 'on his way to testify his goodwill to the King,'⁵ and also being, on November 30th, 1412, at Croydon,⁶ presumably at Arundel's residence there.⁷ Thus one of the last two years of Henry IV. seems preferable to the two first of Henry V. In the latter James seems to have been almost wholly in the Tower;⁸ in the former to have moved with more freedom about the country.

When we come to choose between the Januaries of 1411-2 and 1412-3, we find a considerable weight of evidence in favour of the earlier year. Not only does the tone of the letters suggest a new-born hope of the King of England, such as would be more natural within a short time after the change of ministry in November, 1411, but there is a further argument from the place where the letters were written. According to Sir William Fraser this was Stratford Awe, which he identifies with Stratford-on-Avon.⁹

¹ Letter to Douglas, Dalkeith, and Dunbar. He is mentioned in similar terms in letters (c) and (d).

² Bain, iv. 837.

³ Vickers, *England in the Later Middle Ages*, pp. 341-2.

⁴ *Ibid.* p. 339.

⁵ Bain, iv. 822.

⁶ *Hist. MSS. Com.* 5th report, Drumlanrig MSS. p. 10. If this charter is spurious, as Mr. Brown thinks (*op. cit.* p. 111, note 2), it is at least unlikely that a place of origin was fabricated where James had not resided at that time.

⁷ Wylie, *op. cit.* p. 403.

⁸ Bain, iv. 846, 847, 850, 852, 857. He was at Windsor for a few weeks in the late summer of 1413 (847).

⁹ *Red Book of Menteith*, i. 283.

—a most unlikely residence for James, as both Mr. Wylie¹ and Mr. Brown² have shown. Another reading is Stratford atte,³ which is taken to mean Stratford-at-Bow. Further examination of the manuscript, however, shows that the word after Stratford is neither Awe nor atte, but Abbe (*i.e.* Abbey).⁴ Since, then, Stratford Abbey is the place, it is of first-rate significance that Henry IV. was actually there on 13th January, 1411-2,⁵ little more than a fortnight before the date that I suggest for the letters.

Turning from these events in England to seek evidence from the actions of Scotsmen, we must first ask when 'Archibald of Edmonstone and William of Cockburn' could have taken James' earlier letters to Scotland.⁶ Sir Archibald Edmonstone, so far as I can find, appears in the fifteenth century only here, and in an entry in the English Exchequer Accounts, where he is said to have come with James and the Earl of Orkney to the Tower in the eighth year of Henry IV.⁷ The subsequent silence suggests his early release, but there is no clear evidence on the point.

Sir William Cockburn, on the other hand, not only figures prominently in the Scottish annals of the time, as custumar of Haddington,⁸ but went frequently to England on the King's behalf. We have evidence of such journeys in 1411 and in 1413.⁹ Now, the safe-conduct of 1411 is dated June 15th,¹⁰ which would leave just such an interval as the letters suggest had elapsed. If James had been hoping for a practical outcome from the earlier despatches sent by Cockburn, he was doomed to disappointment when Albany, on 7th December, 1411, appointed envoys to treat only for the release of Murdach.¹¹ Just such a

¹ Wylie, *Henry IV.* ii. 403, note 3.

² Brown, *op. cit.* pp. 162-3.

³ *Calendar of State Papers*, No. 12.

⁴ In this examination I had the good fortune to be assisted by Professor Hannay, Dr. Hay Fleming, and Mr. W. Angus, all of whom concur in my reading. Stratford Abbey was situated at Stratford Langthorne, in Essex. It was a Cistercian house, and must not be confused with the priory of Benedictine nuns at Stratford-at-Bow. See *Victoria County History, Essex*, ii. 129, n. 40.

⁵ Rymer, *Foedera*, viii. 713, '*Teste rege apud Abbatiam de Stratford, decimo tertio die Januari.*' Wylie, *loc. cit.* mentions this visit, but overlooks its bearing on the date of the letters.

⁶ Letter to Albany.

⁷ *Accounts Exchequer*, Q.R. 405-9, in R.O.

⁸ *Exchequer Rolls*, iv. *passim*.

⁹ *Rot. Scot.* ii. 197, 206.

¹⁰ *Rot. Scot.* ii. 197.

¹¹ Bain, iv. 813.

rebuff would explain the suggestion in the letters that Albany was responsible for the delay in his own case, and must be stirred to 'do trewly his det for our deliverance.'¹

Finally, the only evidence that these letters produced any result is to be traced in the events of 1412. On May 18th of that year, John Lyon, now back in Scotland, obtained another safe-conduct to come to England and return at pleasure 'till the deliverance of the King of Scots.'² Three days earlier, safe-conducts had been granted for thirteen Scottish magnates to come to England.³ When it is realised that the thirteen included—either in person or through another of the family—five out of the six to whom James' letters were addressed by name,⁴ the conclusion is irresistible that the embassy was the result of the letters, and that Lyon, who had taken them, had waited for three months in Scotland till this was achieved, when he returned to James.

It is not clear whether the embassy actually started. The Chancellor, at any rate, who was among those named, was still at Perth on 12th June.⁵ Possibly Albany interposed some fresh delay. He may have got the whole matter referred to a Council-General in the autumn, for on December 1st a safe-conduct was granted for 'ambassadors appointed by the Council-General of Scotland to treat for the deliverance of James, King of Scotland,'⁶ but they seem to have done nothing before the death of Henry IV.

The date of the letters is never likely to be completely proved, but the conjecture of January 30th, 1411-2, is supported by a strong chain of circumstantial evidence. It accords with the arrival and later activities of John Lyon, with the movements of

¹ Letter to Graham, Erskine, and Ardrossan.

² *Rot. Scot.* ii. 200. The subsequent issue of safe-conducts for Lyon from 1416 onwards imply the lapse of this one, presumably by the death of Henry IV. If so, the absence of safe-conducts between the accession of Henry V. and the year 1416 suggests that Lyon did not go to Scotland within that period. This would rule out the Januaries of 1413-4 and 1414-5, but the argument from silence is not sufficient by itself.

³ *Rot. Scot.* ii. 200.

⁴ *Rot. Scot. ibid.* The five are William, Lord Graham; Robert Erskine; Sir John Montgomery; James Douglas, brother of the earl and Patrick Dunbar. Others of the embassy may have been among the unnamed recipients of letters (d) and (e).

⁵ *Exchequer Rolls*, iv. 160.

⁶ Bain, iv. 833.

Sir William Cockburn, with political conditions and changes in England, with the known visit of Henry IV. to the place where the letters were written, with the conduct of the Regent Albany, and with the subsequent appointment of an influential embassy of very similar personnel. This seems sufficient at any rate to justify it as a working hypothesis more probably correct than any of the previous guesses.

E. W. M. BALFOUR-MELVILLE.

Henry V. of England in France, 1415-1422

HENRY V. and France, mentioned in conjunction, will invariably recall the victor of Agincourt rather than the heir of France. But that the majority of Frenchmen in the Treaty of Troyes should legally recognise Henry as Regent and future King is no less amazing a fact than the Agincourt victory of some five thousand Englishmen over four times as many Frenchmen.¹ Further, the causes of success are in either case substantially the same. An examination of these causes will therefore elucidate Henry V.'s astonishing career in France.

The starting point of Henry's success was the conviction that 'his conquests had been undertaken from belief in his own just title.'² On this conviction rested 'his marvellous equanimity of spirit in misfortune as in prosperity.'³ With the same serenity he first sighted the French host en route for Agincourt — 'innumerable as a host of locusts'⁴ — as he later viewed the slaughtered piles of French nobility — 'given over by God to flight, captivity, or the sword by means of us who struggled for justice in such few numbers.'⁵

Henry's piety was genuine. He humbled himself before God, entering Harfleur barefoot,⁶ Caen, where he gave thanks first at the Church of St. Peter,⁷ Rouen, in sober attire,

'Withoute pype or bonnys blaste.'⁸

Worldly success never closed the door upon his spiritual vision. 'Mong alle zour moost worldly occupacions, ze desire principally vertuous lyvyng and zour sowle heele,'⁹ Archbishop Chichele

¹ Babthorp's List in Nicolas, *Battle of Agincourt*, 72.

² Translator of Livius or *First English Life of Henry V.* 184.

³ *Chronique d'un Religieux de St. Denys*, vi. 381.

⁴ *Gesta Henrici Quinti* (ed. Williams), 46.

⁵ *Ib.* 55.

⁶ *Le Fèvre de St. Rémy*, i. 229.

⁷ Translator, 91.

⁸ John Page, *Siege of Rouen*, 45.

⁹ Original Letters (Ellis), 1st Series, Letter 2.

admitted in 1418, in a letter to Henry. Hence, in his hour of greatest peril, God vouchsafed him supernatural signs of divine assistance. At Agincourt St. George fought on the English side; ¹ before Caen Castle, upon the imminent approach of a French relieving force—'a marvelous token appeared . . . and that was a white cross over the King's pavilion,' ² before which all danger to the English disappeared.

With success came the settled conviction that all his victories were so many decrees of God. 'Knowe you not,' he asked the Rouennais, 'how manie Castells, Citties and defensible places have been by us obtanyed? Were not these signs of justice?' ³ Civil war in France was similarly the divine way of inviting his intervention—'For I see in operation here all the causes for which a kingdom is taken from one and given to another and I think it is God's pleasure that such a transference should be made for my benefit.' ⁴

Such megalomania is not an uncommon feature in a medieval monarch's character, but what was unusual in Henry's case was his power of forcing his enemies to admit that 'all things followed him so fortunatlie they beleueed all to be geuen him of God.' ⁵ When Vincent Ferrier, the holy man, whose special mission to Henry was to dissuade him from further war, demanded—'W^h he was . . . thus to oppress the people of Christ?' the King made answer—'I am the Scourge of God, sent to punish the people of God for there synns.' Thereafter, 'they two only were together in secret communication by the space of three howers.' Later the Saint freely admitted the English King's quarrel to be 'so iust that undoubtedly God is and shal be on his side.' ⁶ It was as the Scourge of God that the French peasantry first regarded Henry. His coming and its effect upon the people has been compared to a tempest, or to a thunder and lightning storm, ⁷ before which the inhabitants of the whole country-side fled—'like mad men, with wives and children, bag and baggage into the walled towns and fortified garrisons.' ⁸

As it advanced the wave of English conquest only gained momentum, the motive force behind it being the argument

¹ Poem, attributed to Lydgate in Nicolas, *Agincourt*, cclx.

² Translator, 95.

³ *Ib.* 134.

⁴ *Juvenal des Ursins*, 542; *St. Denys*, vi. 251.

⁵ Translator, 138.

⁶ *Ib.* 132.

⁷ *St. Denys*, vi. 101.

⁸ Hall, 77.

—daily more cogent—that ‘the Kinge desisted not from any siege begunn wth out the obtayninge of his purpose.’¹ Soon the sequence proper to the surrender of any great town was the capitulation of its less important neighbours—‘Anone after that Rone was goten, Depe and many other townes in baas Normandie yafe theme over without stroke or siege, when thei understode that the Kyng had goten Rone.’² In reality, some forty towns surrendered,³ one of them, Mantes, sending the elders of the town with the keys almost half way to meet the English envoys.⁴ Such surrenders are proof positive that Henry’s invincibility had become an accepted fact, the negative aspect of which is the solitary defeat at Beaugé, sustained during the King’s temporary absence,⁵ and the French statement that when ‘King Henry was dead the Dauphinists held for certain they would get the best of the war.’⁶

Henry’s outward state was in keeping with his regal claims. Envoys to the King from the besieged towns were confronted by all the trappings of royalty as so many ocular proofs of Henry’s kingship in France, ‘and owre kynge was in his tent with his lordes and with his gentilis and sat in his estate as royale as did ever eny kynge.’⁷ At Rouen Castle when the conquest of Normandy was completed, Henry wore the gorgeous robes of his ducal forbears.⁸ Symbolical too, as Monstrelet suspiciously notes, was the splendour of his wedding—3rd June, 1420—‘on which day, the English king and his princess held great state, as if now he was to become king of all.’⁹ Future events confirmed the French chronicler’s fears, for, at the Christmas festivities 1420,¹⁰ and, again, at Henry’s last Paris feast—Pentecost, 1422—Monstrelet saw his own King, Charles VI., ‘poorly and meanly attended, while the condition of King Henry of England was such that no man could recount his splendid state and pomp.’¹¹ The contrast was but the outward expression of a state of affairs, whereby ‘all power and control was taken from King Charles and put in the hands of his son-in-law, King Henry.’¹²

¹ Holinshed, 120 ; Translator, 154.

² Brut, G, 491.

⁴ *St. Denys*, vi. 311.

⁶ Pierre de Fenin, 618.

⁸ Chastelain, 243, at end of *Gesta* (Williams).

⁹ Monstrelet, iii. 389.

¹¹ *Ib.* iv. 99.

³ Monstrelet, iii. 309.

⁵ Monstrelet, iii. 394.

⁷ London Chronicles, 118.

¹⁰ *Ib.* iv. 22.

¹² *Ib.* iv. 100.

In his hour of greatest peril, as in his hour of triumph, Henry appeared splendidly garbed. On the morning of Agincourt his appearance before his army in magnificent suit of armour, jewelled crown and surcoat of the lions and lilies¹—‘thus armed, as he that feareth not to be knowne of his adversaries’²—was as encouraging to his tatterdemalion ranks as his subsequent appeals to their patriotism. Henry’s leadership was twofold in aspect—On the one hand it was mystical, spiritual, moral—mystical, because he claimed to be God’s chosen vessel, spiritual because of his genuine piety, moral on account of unchanging principles; on the other hand his practical abilities made him a first-class strategist, a resourceful inventor of war-weapons, a disciplinarian and general whose equal was not among the French.

Henry’s was the real brain of the English army, witness the judicious arrangement of his men at Agincourt. His small forces on St. Crispin’s Day were drawn up in one closely massed line, four-deep.³ No men were left to form a reserve, in place of which the surrounding woods, hedge-rows and villages protected the English position.⁴ Further, the soft soil of the newly-ploughed corn fields was no serious disadvantage to the English, for both men at arms and archers fought on foot.⁵ But the French, allowing themselves to be hemmed in between the woods of Tramecourt and the hedges of Agincourt, were ‘so cramped that only some who were in front could lift their arms to strike’⁶ and ‘so loaded with armour, they could not support themselves,’⁷ but ‘sunk ankle-deep in mire.’⁸ The contrast between the two is to be explained by an entire difference of outlook. At Agincourt the French were certain that ‘one charge promptly and boldly executed would suffice,’⁹ even selling in advance the prisoners they were confident of taking—

‘alle the beste bowemen ich on
All for a blank of oure mone.’¹⁰

Throughout this whole period the French nobility regarded the prolonged wars as a series of tournaments, instance, after the Treaty of Troyes, the meeting between Jehan de Luxem-

¹ Waurin ii. 203.

² Translator, 54.

³ *Gesta*, 50.

⁴ Pseudo-Elmham, in Nicolas’ *Agincourt*, ccv.

⁵ Monstrelet, iii. 106.

⁶ *St. Denys*, v. 563.

⁷ Waurin, ii. 210.

⁸ *St. Denys*, v. 559; Juvenal, 519.

⁹ *St. Denys*, v. 559.

¹⁰ In Nicolas’ *Agincourt*, cclviii.

bourg, Burgundy's right-hand man and the Seigneur d'Offemont, a notable Dauphinois, who called a 'brief truce for a day's tourneying, the leaders making great cheer together' and returning anon to mutual destruction.¹

Henry's preparations were made months ahead. For the 1415 expedition, the people of Hampshire had been bidden to bake and brew fully two months before;² for the second venture, in 1417, 'all the shippes ben well stuffid with vitailis and also with alle other maner of stuffe that longit to werre, as armure, Gunys, smalle and grete.'³ Henry's success resulted from broadly outlined plans into which were wrought carefully-considered details. Comprehensive conquests, not isolated successes were Henry's goal, hence his choice of a landing place, in 1417 at Toques, on the left bank of the Seine, from which starting-point it would be possible to seize town after town, finally turning the French position at Rouen, 'and so the kynge gate and conquerid alle the tounys, vilagis, smale and grete yeuen to the cite of Rone.'⁴

Along with Henry's architectonic ability in planning a campaign went promptitude of action, contrasting with French procrastination as typified in Burgundy, 'the slowest man in all matters of business that could be found.'⁵ In 1419 Henry's truce with the French expired at midnight, at dawn his men scaled the walls of Pontoise, entering the town to the victorious cries of St. George, St. George!⁶ Similarly, on the morrow of his wedding, Henry removed to Sens with his whole court and army, 'and there,' he told the English and French knights, who would first have held a tournament, 'each can just and tourney and show his prowess and his spirit.'⁷

With dispatch in business went Henry's proverbial brevity of speech, contrasting again with Burgundy, 'who would not assist the people except by words.'⁸ 'It must be done'; and 'It can't be done,' were Henry's two forms of reply.⁹ But with Henry promise and fulfilment went hand in hand, instance his answer to the complaints of the Parisians that those of Meaux waged mortal war and set fire to everything—'he would see to

¹ Fenin, 607.

² Rymer, *Foedera*, ix. 253.

³ Brut in Appendix to Kingsford's *Eng. Hist. Lit. in Fifteenth Century*, 303.

⁴ *Ib.* 307.

⁵ Bourgeois, 656.

⁶ Monstrelet, iii. 333.

⁷ Bourgeois, 664.

⁸ Chastelain, 239.

⁹ *St. Dengs*, vi. 381.

it, lay siege to the town and take them prisoners and as to the fires, it was only a custom of war and that war without fire was no better than sausages without mustard.' ¹

Henry's practical ability found expression not only in well-devised campaigns but also in the invention of new battle and siege contrivances. At Agincourt, each archer, on the King's order, fixed obliquely in the ground in front of him, as *cheval de frise*, 'a round pole six feet in length and of a sufficient thickness and sharp at each end.' ² The effect of this stratagem was two-fold. Many shared the fate of 'Sir William de Saveuse, a very brave knight, who, along with two companions, pressed on boldly before the rest but their horses tumbled among the stakes and they were speedily slain by the archers.' ³ Secondly, the French cavalry was prevented from riding down the archers, as Bruce had so successfully done at Bannockburn. Instead, many a brave knight quite unwillingly was carried back by his gored steed to spread terror and confusion in the French vanguard—'The horses, when they felt themselves pierced by the arrows retreated and it seemed as if those, who were on them, were in flight.' ⁴ Before they could rally, the archers emerged from behind their improvised palisade and precipitated themselves on the French men-at-arms with hatchets, leaden mallets, and bill-hooks, also provided them by Henry's foresight—'And they beat and cut down the French in piles, till it seemed as if they were anvils on which they struck, for the French nobles fell one above another, many were stifled and the others were slain or captured.' ⁵

But it was for his sieges, as Harfleur, Meaux, Louviers, that Henry devised all kinds of new machines. At the latter town he employed a mysterious engine made of timber, under whose protection 'his men could safely undermine the walls,' an immunity which greatly exasperated the Frenchmen, who cast down a part of their third wall against this machine. A deadly hand-to-hand struggle ensued, from which the inhabitants had to retire into their town, 'leaving the said engine whole and unbroken.' ⁶

The need for these appliances was borne in upon Henry while 'he diligently visited the watches and stations of every company,' ⁷ for at all his most important sieges, Harfleur, Caen,

¹ Juvenal, 561.

² *Gesta*, 42.

³ Waurin, ii. 212.

⁴ Juvenal, 519.

⁵ *Ib.*

⁶ Translator, 117.

⁷ *Ib.* 87.

Falais, Rouen, 'the King takeinge uppon him the care of all his hoast passed many a long wynter night wth out sleepe or repose.'¹ Henry's success in France has been shown to rest on a moral basis and on a practical grasp of military detail. His personal relationship with his men may be regarded as a third support of his power. At the crossing of the Somme, 1415, Henry was stationed in person at one causeway to prevent all crowding.² Even at the end of 1419, when the crown of his labours, the Treaty of Troyes, was within his grasp—'the King gaue not himselfe to rest and sloth. For almost no day passed but he visited some of the holds, Townes and places.'³ Thus Henry never lost touch with his men. In battle and siege he was England's warrior king, ever in the forefront. At Agincourt,

Owre lord the kyng he focht ryght wele,
Sharplich on hem his spere he spent.⁴

At the siege of Melun, by dim torch and candle light, he fought hand to hand in the mines with the Captain Barbazan.⁵ In this respect he differed entirely from the Dauphin Charles, 'a very handsome prince, a good talker and charitable to the poor, but he did not take up arms at all willingly and he had no liking for war, if he could at all get on without it.'⁶ Henry, going into action at Agincourt assured his men that death or victory would be his fate 'for as I am true king and knight, for me this day shall never England ransome pay.'⁷ The Dauphin's first step on hearing that the Treaty of Troyes had banned him the kingdom was 'to provide himself with a very great number of men at arms, always to be about his person, in expectation of the adventures which might befall him.'⁸ Thus the English were united body and soul under a strong national king, while the French were leaderless and divided in counsel.

King Charles VI. had already reached a condition in which 'he was pleased with everybody whether Burgundian or Armagnac and it mattered little to him how things went.'⁹ Burgundy not only absented himself from the Agincourt campaign but bade his vassals 'hold themselves in readiness to march with him when he should call them and not to attend to the summons of any other lord, whatever his rank.'¹⁰ Brittany, with an army

¹ Translator, 126.

² *Gesta*, 43, 44.

³ Translator, 153.

⁴ *Chron. of London*, 120.

⁵ Juvenal, 560.

⁶ Fenin, 618.

⁷ *London Chronicles*, 119.

⁸ Monstrelet, iii. 382.

⁹ Fenin, 593.

¹⁰ Waurin, ii. 186.

'numerous enough to have given the English battle again,'¹ declared that 'unless his cousin of Burgundy were also on the field, he would not set foot there.'² At the head of the military party were the Constable D'Albert and the Marshal Boucicaut, true heirs of the Fabian policy of Du Guesclin and Clisson. Their intention was 'to keep the English in a place, where there was no passage or departure and so by famine cause them either to die or yield.'³ No more potent weapon could have been employed against the English than this Fabian policy. 'So we turned our steps along the river,' writes the Royal Chaplain of their first futile search for a passage across the Somme, 'thinking that we must march full sixty miles into the heart of France, till when our eight day's share of food was spent, our little band, grown weak and weary with long marches and short rations should fall a prey to the great host of the enemy.'⁴ But, as the Chronicles hint, there was bitter jealousy between the officers of the crown and the feudal nobles—('And Messire Boucicaut was made Captain of Normandy . . . at which the Duke of Alençon was much grieved.'⁵) Only an extreme form of this sense of rivalry could have made the aristocratic majority of the War Council meeting at Rouen abandon this policy of studied inaction for one of immediate battle.⁶ At the same time, the proffered help of the Parisian bourgeoisie, to the number of 6000, was refused with the scornful comment—'What do we want with the assistance of these mechanics.'⁷ That many of the communes were actually present at the battle has been noted by few historians, probably they formed part of the ill-fated rear-line, 'whose princes, in their foolish pride were in the vanguard and had left their people without a leader.'⁸ At any rate they must have been disadvantageously placed, for their complete annihilation is recorded—'as the bailiff of Vermandois and his men, the bailiff of Maçon, and his men, of Sens, of Senlis . . . of Caen, of Meaux, all with their men.'⁹

The presence of those citizen soldiers at Agincourt foreshadowed what was to prove Henry's strongest source of opposition, that of the great French towns, many of whom

¹ Chastelain, 220.

² Hall, 64.

³ Juvenal, 507.

⁴ *St. Denys*, v. 549; Juvenal, 518.

⁵ Bourgeois, 645.

² Juvenal, 520.

⁴ *Gesta*, 40.

⁶ Nicolas' *Agincourt*, clxxi, Note 2.

⁸ Fenin, 587.

resisted him to the uttermost. 'Then the English advanced . . . to win what remained of France and no one said them nay, save those of the great towns, who held them some what at arm's length.'¹ The town that surrendered 'without eny sawte or stryfe or stroke smeton,'² was the exception. Most of the Norman cities made heroic though unavailing efforts to defend themselves. 'They prepared there holds, they strengthened there Townes and walls for the resistance of there enemies.'³ But one recurrent phrase—'They hard no worde of succour,'⁴ might be added, like 'Finis,' to accounts of all these heroic resistances. Among such were Melun, 'whose citizens, the King of England had to admit were brave men and not easily to be conquered';⁵ Château Gaillard, which surrendered at the end of a year, when the cords for drawing water from the wells had worn out;⁶ Meaux, which resisted after all its lances had been broken and the besieged fought instead with spits,⁷ and, probably, most memorable of all Rouen, whose inhabitants Henry could only conquer by 'famine, which would not be turned with weapons.'⁸

The very elements of strength which were lacking in the French army were fully present in the English. At its head was Henry, a thoroughly national king, leading his men personally into battle with a last reference to their English homes, where the first services after sunrise were being held—'nowe is gode tyme for alle Engeland prayeth for us and therefore be of gode chere.'⁹ After the King came the aristocracy, most of them his blood relations, all of them English. To each of these men, as Bedford, Exeter, Warwick, Salisbury, trained by Henry to conquer and administer, the Chronicler's tribute is applicable—

Truly, he was a jewel for a King,
In wise counsaile and knightly deeds of war.¹⁰

Writing to Henry from Normandy in 1421 Salisbury sounds a spacious note of entire devotion—'all the capteines here don wel her Diligence . . . and trewly Sir, zif hit liked zour Grace to comaunde me to . . . anything, . . . I am ful redy ther to.'¹¹ 'Happy are those subjects who have such a king,' remarked

¹ Bourgeois, 658.

² Town of Sees in Brut, Kingsford, *Eng. Hist. Lit.* 306.

³ Translator, 82.

⁴ *Ib.*

⁵ Juvenal, 558.

⁶ Monstrelet, iii. 337.

⁷ *Ib.* iv. 92.

⁸ Holinshed, 102.

⁹ Brut (ed. Brie), C.

¹⁰ Hardyng.

¹¹ Rymer, *Foedera*, x. 131.

the Emperor Sigismund, once to Henry, 'but more happy is the King that hath such subjects.'¹ Their obedience to the King was partly prompted by affection and respect but also 'he was so feared and held in dread by his princes and captains that there was not one of them, no matter how nearly related or on how good terms, who dared transgress his commands, the chief reason being that the King punished the disobedient as if they were felons without having any mercy on them.'² Thus a favourite squire, who had connived, for the sake of a bribe, at the escape of a French prisoner was, by order of the King, publicly hanged.³

Henry's rewards were as liberal as his punishments were severe. The Norman Rolls abound with grants to his followers of confiscated land to be held by homage and the rendering yearly of some trifle, as a nosegay of red roses, a sparrow-hawk, a swan, two blackbirds, a pound of pepper, a similar quantity of ginger, a gold ring, a banner, a lance, a sword, gilt spurs, a sheaf of arrows.⁴

The common soldiers of the army were as purely English as its upper ranks—some hundred foreign names only appearing in the extant muster rolls.⁵ Their services were also rewarded. In 1417, booty taken from Normandy was being put up for sale in every quarter of England.⁶ But the King forbade looting from the outset of his career, when on the way to Agincourt, he ordered a thief (prototype of Shakespeare's Bardolph) to be publicly hanged because he had stolen from a church a pix with the Eucharist.⁷ In accounts of the French Civil war there is more than one example of a town capitulating to the rival party on the promise of protection, but later being 'completely pillaged contrary to the orders of the Captain.'⁸ There are no such English instances. Instead, carefully considered measures forestalled possible temptation—'and because his people shoulde not give them to spoile the King first constituted certen gentlemen in everie street to prohibit all rapins.'⁹

From his first entry into Normandy Henry had posed as its rightful lord. Terror-stricken peasants, brought before the King, were told that 'he had come to his kingdom to give them liberty, such as they had enjoyed under King Louis.'¹⁰ The

¹ Hall, 76.

² *Ib.* 14, 15.

³ *Gesta*, Appendix ix.

⁴ Monstrelet, iii. 385.

⁵ Monstrelet, iv. 116.

⁶ Norman Rolls, 763, 783, 789, 793, 803.

⁷ Adam of Usk, 131.

⁸ Translator, 137.

⁹ *Gesta*, 41.

¹⁰ Juvenal, 507

successor of St. Louis, the saviour of France, such was the rôle Henry desired to fill in the eyes of his prospective subjects. Long before the formal issue of his Military Code (Mantes, 1419) stringent orders for the good governance of his army were proclaimed, outrages on church property, men of religion and women being specially forbidden.¹ The result was that 'the French men at arms, sent to protect the country, wrought as much or even more harm to the poor people as did the English';² hence the remark attributed to the harassed populace—'If the King of England be the stronger, well let him be our lord, so that we may live in peace and comfort.'³ The whole pyramid of French society was toppling to destruction. At its base was the peasantry, turned brigands, thieves and murderers, 'burrowing like wild beasts in the woods.'⁴ The only hope of protection seemed to lie in the strong, just rule of the English King, hence the complacency with which many French men viewed the Treaty of Troyes—and a better arrangement, both for himself (the French King) and his kingdom could not have been desired.'⁵

Fiscal considerations also constituted an important factor. Where the French signalled Henry's first entry into France by imposing 'the heaviest tax collected within the memory of man,'⁶ Henry's first administrative act was to reduce the much-hated gabelle.⁷ In like manner, where the French consistently undermined municipal rights, the English King protected these—

And thei to haue her ffraunchisis fre,
As it was wonte in olde tyme to be.⁸

Henry would have the peasant attend to his plough, the merchant to his wares, without any interference.⁹ In his treatment of the common people, justice was his main motive—'Therefore the poor people loved him above all.'¹⁰ The lower orders of the clergy, often accompanied by their parishioners, also came to swear fealty to the King.¹¹ Both in Church and State, Henry's ideal was to restore as quickly and as fully as possible the status quo. On the surrender of a great town, he might, as at Meaux,

¹ *Gesta*, 15; Walsingham, ii. 322.

² *St. Denys*, vi. 163.

³ Chastelain, 251.

⁴ Rymer, *Foedera*, ix. 583.

⁵ Black Book Admiralty, i. 459.

⁶ Rymer, *Foedera*, ix. 672; 132 chaplains and curates come to the king.

⁷ Bourgeois, 645.

⁸ Bourgeois, 670.

⁹ Bourgeois, 644.

¹⁰ Brut, 418.

¹¹ Fenin, 614.

hang the ring-leaders,¹ and exempt for special punishment 'one that blewe and sonned an Horne durying the Siege,'² but to the citizens 'he foregaue from piety all shrewd speeches made against him.'³

What thwarted Henry's purpose was the attitude of the upper clergy and the seigneurs. In 1418, there was only one resident bishop in Normandy.⁴ Similarly the great seigneur came to terms only on the understanding that he should march out of the town with his whole household and men at arms.⁵ The apostacy of Guy le Bouteiller, late Captain of Rouen, was evidently a solitary instance, for more than one French chronicler insists that 'no seigneurs went over to the side of the English.'⁶ Confirmation of this lies in a document addressed by the King to his Privy Council (1418), where he admits that 'in substance there is no man of estate come into the King's obedience.'⁷ Without the help of one of the warring parties there was every prospect of his having 'to continue forth his werre to the hool conquest of the reaume of France.'⁸ The dagger which struck down John the Fearless at Montereau also cut the gordian knot of Henry's difficulties by turning Philip of Burgundy into a devoted ally.

The King's diplomatic handling of French politics, so as to have the assistance, overt or secret, of either Armagnac or Burgundian may be regarded as the fifth and final support of his power in France. The short-sighted, self-seeking conduct of the Armagnac adventurers, who were responsible for the murder at Montereau, played into Henry's hands as effectually as Burgundy's policy in 1417, necessitating the withdrawal from Normandy of all Armagnac troops, had made possible the conquest of that province—'At the same time as the King of England made his descent at Toques, the Duke took the field and went towards Paris without making war upon the English King, for it rather seemed that he was of his party.'⁹

Burgundy, in these critical years, was to the Central Government of France what Scotland most desired to be to the English

¹ Waurin, ii. 404.

² Gregory's *Chronicles*, 143; Monstrelet, iv. 94.

³ Gregory's *Chronicles*, 127.

⁴ Rymer, *Foedera*, ix. 578, 586.

⁵ *Norman Rolls*, 293.

⁶ Monstrelet, iii. 309; Juvenal, 545.

⁷ Nicolas, *Proceedings of the Privy Council*, 351.

⁸ *Ib.*

⁹ Chastelain, 179.

kingdom—a thorn in her side—a traditional attitude curbed, for the time being only, by the diplomacy and strength of Henry V. But Scotland's real attitude to Henry V. is to be found not in the forced actions of her captive King, but in the redoubtable doings of the Dauphin's Scottish allies, whose entry into France Henry had tried in vain to prevent.

The four or five thousand Scottish gentlemen, under the leadership of the Earls of Buchan and Wigton, who landed at La Rochelle in 1421 and were received by the Dauphin in great state,¹ were mainly responsible for the signal discomfiture of the English at Beaugé² 'upon Estre Evyn, the xxii day off Marche. And the yeere off oure Lorde mccccxxj, the Duk off Clarence with meny other Lordes were slayne beyyonde the water off Leyre in ffraunce.'³

Henry's success rested therefore on his own magic personality, on his practical generalship, on his command of a first-class army, on his power to give good government, and, finally, on his diplomatic handling of the rival French parties—foundations largely dependent on the life of the King. With his death the personal appeal would come to an end. Other hands would assume the reins of government, but hardly with Henry's comprehensive, regal grasp. Moreover, Englishmen were tiring of the war. John of Cornwall, cousin and general of the King, whose young son had been killed at Meaux, 'made a vow to fight no longer against Christians.'⁴ 'Prey for us,' writes the fighting man to his comrades in England, 'that we may come sone oute of thys unlusty soundyours lyf yn to the lyf of Englonde.'⁵

The last years of Henry's reign witnessed redoubled efforts to raise men and money. The Emperor, who had previously promised reinforcements, was told that 'the King, in the point and conclusion of his labours, had never more necessity.'⁶ Private gentlemen were implored 'to assaye by all menesse . . . to exyte and stirre sych as bene able gentilmen . . . to kome ovyr . . . armyd and arayde.'⁷ 'But woe is me,' writes Adam of Usk, on the eve of Henry's last expedition, 'mighty men and

¹ *St. Denys*, vi. 455. ² Juvenal, 564. ³ *Chronicles of London*, 73.

⁴ *St. Denys*, vi. 449; Juvenal, 562.

⁵ *Original Letters* (Ellis), Second Series, vol. i. 76.

⁶ Rymer, *Foedera*, x. 161.

⁷ *Original Letters*, First Series, vol. i. No. 3.

treasure of the realm will be most miserably foredone about this business.' ¹

Henry's last campaign more than justified his fears. 'The year 1421 was the worst in the Isle of France and Normandy ever seen by man both as to food and other necessities.' ² The march towards the Loire, on which the King lost 4000 men, ³ has its parallel in the 1415 wanderings of the English army along the banks of the Somme. Whether through chance or policy the Dauphinists in 1422 followed the Fabian tactics abandoned in 1415, but in which still lay their only hope of salvation. On his baffling pursuit of the enemy 'utter famine attacked Henry's army and along with it a fell disease.' ⁴ The conclusion was ever the same, 'against him came no man, nor no enemy abode his comming.' ⁵ Even the threat to the safety of the Burgundian town of Cosne, to relieve which in person, Henry, at death's door with dysentery and fever, made a last heroic effort, ended with 'the Dauphin retreating to Bourges and not appearing nor a single man of his on the appointed day.' ⁶

Before his death Henry's first-class army was no longer what it had been, and on his power to enforce his commands rested his successful administration, witness the prudent silence with which the influential University of Paris met Henry's refusal to give them preferential treatment as to the non-payment of taxes—'otherwise they would have been consigned to prison.' ⁷ 'Rigorous observer of justice, he would spare the humble and bring down the mighty.' ⁸ Therefore the weak sought his protection and the great had to obey his commands, but, in both cases, the basis of Henry's successful rule was largely its material advantages. There was no sentimental devotion that would stand the shocks of evil fortune.

Finally, his success rested on the rivalries of the French; but in the long run the rivals might unite against the invader. The Treaty of Troyes, like the battle of Agincourt, was not only a party event but had not even the whole-hearted adherence of one party, many Burgundians being opposed to the English, as William of Orange, ⁹ Jacques de Harcourt, ¹⁰ Isle d'Adam, formerly

¹ Adam of Usk, 320.

² Bourgeois, 669.

³ Herald of Berry, quoted *Gesta* (Williams), 260.

⁴ *St. Denys*, vi. 465; *Le Fèvre*, ii. 39.

⁵ Translator, 175.

⁶ Monstrelet, iv. 107.

⁷ *St. Denys*, vi. 381.

⁸ *Ib.*, and Monstrelet, iv. 37.

⁹ Juvenal, 560.

¹⁰ Monstrelet, iv. 41, 76.

Marshal of France,¹ and the Bishop of Paris, 'who was not very safe in his house at Paris, since he was not in favour with the English King.'² Add to this the spirit of French patriotism, although as yet almost inarticulate. Few spoke in the heroic accent of the widowed Lady of Roche Guyon (her husband had fallen at Agincourt), who refused to wed Henry's nominee, the apostate Guy le Bouteiller or even to take the oath of allegiance to the English King, but 'preferred lose all . . . rather than desert her sovereign lord.'³ But many disliked that their King's ordinances could only be issued 'on the advice of our very dear and much loved son, the King of England, Heir and Regent of our kingdom.'⁴

Further, just as the Burgundian alliance had failed France at Agincourt in its hour of greatest peril, so might it yet fail its English ally. Burgundy, including Alsace and Lorraine, represented the ill-fated Middle Kingdom of Charlemagne's Empire—a source of disappointments and division from the days of its inception under the grandsons of the great Charles. On the possible instability of his connection with Burgundy, Henry's last worldly thoughts turned—'and in particular he forebade his brother Humphrey to have any quarrel with his fair brother of Burgundy.'⁵ But if Henry foresaw the divisions that were to make the reign of the baby heir, whom he had never seen, one of the most unfortunate in English annals, his final thoughts, on the day of his death, 31st August, 1422, turned to his unfulfilled dream of waging war against the infidel, almost his last words being—'Good lord, thou knewst that my mynde was to reedifi the waulles of Hierusalem.'⁶

Viewed in perspective, his success in France was no more lasting than that of the medieval crusading ventures he had hoped to emulate.⁷ The true basis of English national greatness lay not in the scene of his life's work nor in the Jerusalem of his dying thoughts but—

In England's green and pleasant land.

I. M. U. MUIR WILSON.⁸

¹ Fenin, 606 ; Monstrelet, iv. 37 ; Le Fèvre, ii. 33.

² Bourgeois, 670.

³ Juvenal, 545.

⁴ Lognon, *Domination Anglaise*, 42.

⁵ Monstrelet, iv. 110.

⁶ Brut, Version ending 1461.

⁷ Rymer, *Foedera*, x. 317 ; Nicolas, *Proceedings of Privy Council*, iii. 117.

⁸ Research work on this subject was undertaken by the writer as a grantee under the Carnegie Trust.

A Letter to Scotland from the Council of Basel

IN 1870 books from a library in Florence were being sold in London. There was a manuscript of medical interest, bound within a parchment cover bearing the inscription 'Ricetario Optimo,' and described in the catalogue, under the name of Gilio di Portugallo, as 'tracta di rimedii di diverse malatie'—a translation 'di lingua Cathalana in lingua Toscana,' completed on May 24, 1463. The purchaser, Mr. Clements, happened to notice that on the inside of the cover a document was inscribed; and, when it was unfolded, the writing proved to be in good preservation, though in some places a little faint. In 1922 the cover, separated from the manuscript, was submitted to experts at the British Museum, who found that it contained a letter addressed to Scotland in 1442 by the Council of Basel. On the ground that the letter, both from its nature and from its date, was of special interest to Scotland, the British Museum authorities recommended that it should be submitted to the Advocates' Library, in case the Faculty of Advocates should wish to acquire the document for the nation. After consultation, Mr. W. K. Dickson satisfied himself that the letter was of importance for Scottish history; and now it has been placed permanently in Edinburgh.

A difficulty at once arises. How could a letter addressed to Scotland by the Council at Basel in 1442 come to form the cover of a medical tract written in Italy some twenty years later? This copy of the letter can hardly have reached its destination; but it is unlikely that the communication was never made. Close examination of the manuscript shows that the clerk committed errors in copying. At one point a necessary word had to be added on the margin: at another a mistake required erasure, and the true reading was uncomfortably inserted, and not quite legibly, in too confined a space. The presumption is, therefore, that the clerk's execution was condemned as unsatisfactory, that so important a letter was again engrossed,

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and that this parchment became waste. The approved copy no doubt reached its destination, but it has perished: the rejected version survives to inform us of an incident hitherto unknown, and it has come to us by a curious and devious route, four hundred and eighty years after it was written.

The fortunate discovery of this document adds to our somewhat scanty stock of information regarding Scottish ecclesiastical policy in the early years of James II.; but it also provides us with the complete text of a commission on July 31, 1433, whereby James I. signified his adherence to the Council of Basel. This commission was known to Joseph Robertson, who printed it in his *Concilia Scotiae*¹ from a defective copy in the Advocates' Library. In the preface to his great work, Robertson ventured to conjecture that the two envoys whose names had been lost were friars.² The supposition turns out to be erroneous. The commissioners were John, bishop of Glasgow: John, bishop of Brechin: John, abbot of Melrose: Thomas, abbot of Dundrennan: Donald Macnachten, doctor of decreets and dean of Dunkeld: Nicolas of Atholl, doctor of decreets and precentor of Dunkeld: John Macgilhauch, provost of Lincluden: David Cadiou, precentor of Glasgow.

In the *Scottish Historical Review* for 1918³ the relations between James I. and the Papacy were discussed, with special reference to the part played by John Cameron, bishop of Glasgow. It was pointed out that the orthodox view of the controversy pursued throughout this reign was almost certainly mistaken, and proceeded from a mistranslation of Latin for which Lord Hailes was originally responsible, as well as from a failure to apprehend the significance of the numerous acts passed by Scottish councils and parliaments regarding the conduct of clerks travelling to the continent and Rome. Conflict between James I. and the Papacy did not arise, as had been thought, from any unwarranted interference by the secular power with ecclesiastical courts, for the passage mistranslated actually shows that Parliament adopted and passed a statute on procedure in these courts by authority of the Provincial Council of the Church. The conflict arose from the evils of papal centralisation, evils which were economic as well as administrative, which were felt by Scotland as by the other nations of Western Europe, and which led to the abortive attempts to reform the Curia by means of Councils.

¹ II. 248.² I. lxxxviii.³ XV. 190.

John Cameron, bishop of Glasgow, who became the Chancellor of James I., found himself in a delicate position ; but his actions show that he sympathised with the party of reform and supported his royal master against Martin V. and Eugenius IV., who in succession employed as their emissary William Croyser, archdeacon of Teviotdale. Martin V. had summoned the Chancellor of Scotland for ignoring papal reservations ; after Eugenius renewed the summons in the spring of 1433, Croyser, the favoured instrument of both popes, was finally cited before the Parliament of Scotland on a charge of treason. Turnbull, the future bishop of Glasgow, who was the king's procurator at the Roman court, sought in vain to mediate in the quarrel.

Charles VII. of France, in September of 1432, promised to send envoys to the Council of Basel,¹ and his conduct may have influenced James. But the acute controversy in which he was himself involved would be sufficient inducement for the Scottish king to express hearty approval of the reforming Council in June 1433 and, a few weeks later, to grant the commission of adherence already mentioned. Cameron, we know, appeared at Basel, at Rome, and at the court of Charles VII.² Croyser, also, visited Basel, in a cantankerous frame of mind, laying about him on the subject of prelates in general and the Scottish clergy and king in particular.³ The visit of Cameron to Rome and the appearance of Croyser at Basel are at first sight surprising. The explanation lies in the fact that a new phase had now developed in the relations of Council and pope ; and this phase it is necessary to understand.

The Council of Constance, which brought the great schism to an end and elected Martin V., took precautions to provide for periodical General Councils. The next assembly, for which Pavia was named, had to be transferred, because of pestilence, to Siena. When the Council appointed for Basel fell due, Eugenius IV. succeeded Martin V. Eugenius, reluctant like his predecessor to give facilities for anti-papal enactments, desired to break up the Council and appoint another for Bologna in 1433 : the Council itself, founding on the provisions at Constance, declined to be dissolved by a hostile pope. Opposition became more and more pronounced. In the spring of 1432

¹ Mansi, vol. 30, 171.

² *Scot. Hist. Rev.* xv. 196 ; Robertson, *Hist. of the Christian Church*, viii. 120.

³ Robertson, *ibid.*

the decree of Constance was renewed, whereby General Councils were declared to own their authority immediately from Christ. The dissolution by Eugenius was annulled, and he was pressed to recall it. By the autumn there was a definite proposal to treat the pope as contumacious. Meanwhile Sigismund had gone to Italy to obtain the imperial crown at the hands of Eugenius. His object was achieved in the summer of 1433 after a delay of many months; and he served as a convenient mediator, striving to modify or delay action by the Council and bring the pope to concession.

Distracted by troubles in Italy Eugenius was compelled, towards the close of 1433, to revoke the dissolution. In the spring of 1434 papal legates appeared at Basel and were admitted, after taking oath in their own names that a General Council derives its authority immediately from Christ, and that even the pope is bound to obey it in matters concerning faith, extirpation of schism, and the reform of the Church in head and members.

The dissolution had been revoked and this temporary settlement was being reached when, as our new document records, Cameron appeared at Basel on February 8, 1434, presented the commission of James I., took oath to maintain the Council and its decrees, delivered an oration, and along with his colleagues urged the fathers to continue until their good work was done. The King of Scotland was ready to obey and execute whatever might be enacted.

The Council required little encouragement. Strengthened by success, it proceeded to discuss some of the gravest abuses: asserted the freedom of chapter election: forbade reservations, expectancies, annates: regulated elections to the papacy and even the conduct of popes. All this was grateful enough to James; but Cameron failed him, and made his peace with Eugenius. When we next catch sight of the bishop of Glasgow, he holds an office in the papal court and is working for the restoration of Croyser to his rights and benefices in Scotland. There is good reason to believe that James, obsessed by his own particular quarrel, was irritated, and that one reason for the famous visit of Aeneas Sylvius to our country was the desire of Eugenius for a reconciliation between Cameron and his royal master. The reconciliation never took place; and when James I. was murdered Croyser, as far as we know, still lay under condemnation.¹

¹ *Scot. Hist. Rev.* xv. 196 ff.

Meanwhile Eugenius, casting about for an opportunity to put an end to the offensive Council of Basel, found it in the project of union with the Greek Church, seriously endangered by the Turks and alive to the practical advantages of combination with the Latins. Basel was not convenient for Greek negotiators. The Council, though still maintaining its dictatorial attitude to the pope, was divided on this particular question. When Eugenius, in September of 1437, issued a bull transferring the Council to Ferrara, he was promptly declared contumacious.

A new schism appeared to be imminent, all the more because death removed the mediating influence of the Emperor Sigismund. It soon became evident that the secular powers, ready enough to accept advantages offered by the decrees passed at Basel, were affected by the ominous threat of schism. The electors and Albert of Austria, their elect, at first declared neutrality: subsequently the Germans recognised enactments in reform, and rejected the proceedings against Eugenius. Charles of France, who had intervened in 1433, before the dissolution was revoked, to dissuade the assembly at Basel from extreme measures,¹ refused to send envoys to the pope's Council at Ferrara, while the reforming decrees of Basel were incorporated in the Pragmatic Sanction of Bourges (1438).

The attitude of James I. in this situation can scarcely be determined. As we saw, he seems to have been incensed by Cameron's reconciliation with Eugenius, and he does not appear to have consented to the restoration of Croyser. He was in no mind to abandon the anti-papal policy which he had adopted from the beginning of his active reign and which had prompted him, in 1433, to adhere to the Council of Basel. Yet there were certainly ecclesiastical troubles in Scotland, and the king was compelled, with whatever grace, to receive a papal nuncio, whose negotiations were interrupted by the assassination at Perth. Our document dwells resentfully upon the allegation that James, before his death and the bull of transference to Ferrara, revoked his adherence to the assembly at Basel. The truth may be that the nuncio was on the way to succeed, but that no definite decision had been reached and no specific action taken. Bower tells us that the nuncio was 'admitted by the king' in a general council at Perth early in February.² Little more than a fortnight later James was dead.

¹ Mansi, vol. 30, 636.

² *Scotichronicon*, xvi. c. 26.

Encouraged by the acceptance of its decrees, and ignoring the scarcely veiled disapproval of its attitude towards Eugenius, the Council at Basel proceeded to the extremity of deposition and elected Felix V., who was crowned in 1440. This drastic action, reviving schism instead of promoting reform, decisively alienated support and diminished conciliar authority. Shortly before the election of Felix, the Emperor Albert died, and was succeeded as King of the Romans by his cousin Frederick, who had shown favour to the Council. But the general verdict of Germany was for neutrality; and Frederick, when he appeared at Basel in the winter of 1441, acted accordingly. Alfonso of Aragon stood aside, prepared to drive a bargain with either pope. France had already declared for Eugenius. Thus the Council continued to decline. It met for the last time in the summer of 1443; and our document represents one of its final and desperate efforts to avert extinction.

The letter, dated at Basel on October 27, 1442, may be summarised briefly. It is addressed to the prelates, barons, and other counsellors of James II., covering and quoting at length a concurrent letter to the young king. The Council desires that princes should understand the justice of its cause, and hopes that so they will be induced to aid the Church in the project of reform.

James II., in the letter addressed to himself, is reminded of his duty as the successor of Catholic kings. He must refuse to be seduced by 'those who seek their own things, not those of Jesus Christ.' His father, as is proved by the formal commission under the great seal on July 31, 1433, signified adherence to the Council; and the commission was executed by the bishop of Glasgow and certain of his colleagues on February 8, 1434. Now, however, James II. has issued an edict that no Scot may go to Basel, adhere to the Council, or obey it—a breach of his father's oath, a slur upon the Scots, 'who have been reputed hitherto men of distinguished good-faith,' the act of advisers forgetful of their prince's honour and their own salvation. The prohibition is a blow to the orthodox faith of the Catholic Church; for two General Councils have laid it down that their assemblies, representing the universal Church, have power immediately from Christ, with authority over the pope himself in matters pertaining to the faith, extirpation of schism, and general reform of the Church in head and members. Hence attempted papal dissolutions were declared by the Council to be of no effect:

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the whole Church and all Catholic kings accepted the doctrine : Eugenius, lately pope, was compelled to revoke his hostile acts by a bull read in public session before the Emperor Sigismund and many other princes. The erection of the so-called Council at Ferrara these princes opposed. Charles of France forbade his subjects to attend that assembly as a General Council. Albert, King of the Romans, issued safe-conduct to Basel when meetings at Ferrara had already begun : Frederick, now King of the Romans, has continued to grant safe-conduct : Albert and Charles accepted decrees passed at Basel after the erection of the Ferrara 'conventicle,' and had them executed, long after the suspension of Eugenius. Many kings and nations, Ferrara notwithstanding—Castile, Aragon, Poland, Denmark, Sweden, Norway, Bohemia, and Hungary—recognised Basel, and have never declared to the contrary. In these days, Frederick and the electors have written, and have sent orators who have been well content to remain ; and the Council is at one with these princes in the effort to save the Church. The Scottish edict against obedience to the Council or its pope without consent of king and realm and the justification advanced for its promulgation clearly contradict the Catholic faith and the gospel of Christ. The king and the realm may decline to hear the Church—which God forbid—but it would smack of heresy to say that therefore no Scot ought to or might obey it. Every Christian is bound to believe that there is one Holy Catholic Church. Two General Councils representing the universal Church, at Constance and at Basel, have affirmed their power to be supreme, as held immediately from Christ. Love of gain and striving for place have blinded those who will have it that none ought to or may obey a General Council without consent of the secular power. James II. will surely not permit further advance along this path, but will imitate his father, declining the false suggestion that James I., before his death, revoked obedience. Those who say so are insulting the father's memory to seduce the son and cover their own selfish aims. They would represent James I. as dying outwith the unity of the Church, no Christian, a man who wantonly violated his oath. The young king will therefore give no ear to false information. He should recognise this as a true General Council of the universal Church, and cause its wholesome decrees, transmitted under its *bullæ*, to be observed and executed : he ought to consult the public advantage of the realm, not the private interests of a few. William Croyser,

notary of the Apostolic See, is the bearer, to whom James is requested to give his answer.

Turning again to the king's counsellors, who must give account to God and men, the Council reminds them of their own responsibilities. Let them labour that their memory may be blessed in Scotland and throughout the Church, and that they may obtain their glorious reward from the divine goodness. So the letter concludes.

The course of ecclesiastical affairs in Scotland after the murder of James I. cannot be described in any detail with the knowledge at our disposal. Cameron seems to have returned,¹ and to have been Chancellor till May of 1439, when he was succeeded by Lord Crichton. He was again in trouble with Eugenius for neglect of papal mandates. In the winter of 1439, some months after the Chancellor's fall from his secular office, the pope was about to send Croyser to absolve and rehabilitate him as an ecclesiastic.² This betokens an alteration in Scottish policy, repentance in the bishop of Glasgow, and some prospect of reception and restoration for Croyser. Whatever may be the explanation—a refusal to receive the objectionable archdeacon, a politic act by Felix V., or both combined—Croyser joined the Council of Basel, obtained provision to a French priory from the anti-pope, and burned his boats.³ In 1441 he was declared by Eugenius to have forfeited his archdeaconry of Teviotdale.⁴ Why he was chosen by the Council as the bearer of this letter to the court of James II. does not appear. He may have had his own purposes to serve; for he was afterwards reinstated.

A new man was rising to influence in the councils of Scotland—James Kennedy, nephew of James I. and cousin of the new king. Possibly as the result of Cameron's fall and in connexion with it, Kennedy, as bishop of Dunkeld, proceeded to Italy and appeared at the pope's Council, now transferred from Ferrara to Florence. Eugenius had found his man. In September, 1439, the pope on his own initiative granted the abbey of Scone *in commendam* for life.⁵ Wardlaw of St. Andrews, whose age and health may have had something to do with Kennedy's journey, died in the following spring; and the bishop

¹ He is named as an ambassador to England, Sept. 18, 1437 (*Rot. Scot.*).

² *Sc. Hist. Rev.* xv. 200.

³ *Ibid.*

⁴ *Cal. Pap. Reg.* ix. 174.

⁵ *Ibid.* viii. 270.

of Dunkeld was present at the papal court to secure a translation to the principal Scottish see, with a faculty to absolve adherents of Felix V.¹ He must have been impressed by contemporary events. In the summer of 1439, a few days after deposition by the Council of Basel, Eugenius had gained a striking success. In achieving a union with the Greeks he seemed to have healed a greater than the papal schism, and was the declared head of the universal Church. An historian of the popes has pointed out that, while it was difficult to form an opinion as to the duration of the union, an exaltation of the papal authority, contemned at Basel, was the general expectation.² By conviction, as well as by interest, Kennedy seems to have become a papalist. The conflict between pope and Council had bred ecclesiastical trouble in Scotland. To that was added baronial turbulence during a royal minority. Whatever objection there might be to the centralised papal authority, seen through the eyes of a forcible monarch like James I., a Scottish churchman and statesman in the early days of James II. must resolutely discourage ecclesiastical schism and the anarchical tendencies of the conciliar doctrine. It will have been observed that our letter dwells repeatedly upon the action of counsellors who mislead James II. for their personal ends. One at least of the offenders, and probably the chief, must be James Kennedy. We hear of no express answer to the Council's appeal, if the appeal reached Scotland; but a decision is recorded. At a council of the estates in November, 1443, under the presidency of the boy king, it was enacted that 'ferme and fast obedience be kepit til our haly fadir the pape Eugene be actis of generale and provinciall consalys publicit and notifiit of befor and proclamit be the kingis autorite, ande at rigorous process be maid agaynis the favoraris of scissione and the agaynstandaris of the saide obedience, and at na persounis spirituale nor temporal change the said obedience quhil the king and the realme ordane and decrete thar apon.'³ As far as Scotland was concerned, the attempt to reform the Curia had failed. It was in the time of James III., and of Kennedy's nephew and successor, Patrick Graham, that the nationalist controversy with Rome was revived, leading finally to the separation of 1560.

R. K. HANNAY.

¹ *Ibid.* 238.

² Pastor, i. 317.

³ *A.P.* ii. 33.

Reviews of Books

SOMERSET HISTORICAL ESSAYS. By J. Armitage Robinson, D.D., Dean of Wells. Pp. viii, 160. Royal 8vo. London: Humphrey Milford (for the British Academy). 1921. 10s. 6d.

THIS is the third work on the early ecclesiastical history of Somerset and its neighbourhood written by Dr. Armitage Robinson since his retirement to the Deanery of Wells. It contains six essays and three appendices. Two of the essays 'William of Malmesbury on the Antiquity of Glastonbury' and the 'Saxon Abbots of Glastonbury' carry on the line of research begun in the study of the *Saxon Bishops of Wells* previously published by the British Academy. The other essays in the book are concerned with the administration of the diocese of Wells in the reign of the Norman and early Angevin kings of England. They are (iii) The First Deans of Wells, (iv) Early Somerset Archdeacons, (v) Peter of Blois, who was an Archdeacon of Bath, (vi) Bishop Jocelin and the Interdict. Two of the appendices deal with early Glastonbury charters, the third with the early career of John Cumin, who was archdeacon of Bath (and, like Peter of Blois, an absentee), before he became archbishop of Dublin in 1181.

As the author points out in his preface, two of the essays are of much more than local interest. 'William of Malmesbury's *Enquiry into the Antiquity of the Church of Glastonbury* is a byword among the historians. . . . The application of the ordinary tests of criticism leads to a very different verdict.' The work survives in a manuscript of the thirteenth century, and may best be studied in Hearne's edition (1727) of Adam of Domesham's history, which follows it in the manuscript. Dr. Robinson was first convinced that the *De Antiquitate*, as it has come down to us, is a composite work, when he gave himself the task of translating it into English. The sudden changes of style were too striking to be disregarded. He decided to test his opinion by the application of methods of purely historical criticism, and he claims to have shown that it is possible to recover the book in its original form, a form worthy of the reputation of the great scholar who wrote it. Stripped of later additions, and notably of the notorious Charter of St. Patrick, the enquiry into the antiquity of the church of Glastonbury is revealed as a serious historical work, compiled from the muniments of the abbey while William was a guest of the monks (c. 1120-5).

Dr. Robinson shows that the additions about St. Phagan and St. Deruvian are taken from Geoffrey of Monmouth or Gerald of Wales, that the charter of St. Patrick is an invention of the middle of the thirteenth

century, and that the story of Joseph of Arimathea and the legend of the Holy Grail were added later still. Scholars will appreciate the study of the 'Charter' of St. Patrick and note the skilful use which the Dean makes of the history of indulgences to show that 'the excessive terms of indulgence granted in the charter could hardly have suggested themselves to a forger of any time before William of Malmesbury wrote' (p. 17).

The other essay of more than local interest is the long study of the career of Peter of Blois (c. 1135-c. 1212). Peter was a scholar of Paris, who became archdeacon of Bath in 1182, while he was in the service of Richard, archbishop of Canterbury. He was an absentee, for he had important duties in a wider sphere than Bath, and the archdeaconry was but one of several offices which he held in France and Normandy and England. His official did the work for him. In later years when Peter became archdeacon of London and had leisure to attend to his duties he found to his chagrin that an archdeacon's influence and emoluments might be very small indeed. His importance in history is due to the letters which he wrote, often on behalf of his employers, during the course of his secretarial career. He had a long and varied experience. In his youth he served in the chancery of the King of Sicily, in his prime he served the archbishop of Canterbury, and he was one of the few people who prized the friendship of the famous William Longchamp, bishop of Ely. Dr. Robinson complains with much truth that Peter and his letters have not received proper attention from historians. The case is not quite so bad as he thinks,¹ and we are surprised to learn that the late Mr. W. G. Searle's scepticism has been an excuse for the neglect of Peter's correspondence. The absence of consistent arrangement in the MSS., the chronological difficulties and the uncritical nature of the existing editions are sufficient to explain the caution of historians.² Dr. Robinson's essay will, we hope, become the starting-point of further investigation and inspire some scholar to make a really definitive edition of the letters. He has shown that many of them can be fitted into their proper place, and he has written an excellent chronological sketch of Peter's life. His most important correction of generally accepted dates is to be found in his revised list of the archdeacons of London during the reigns of Kings Richard and John. He shows, in our opinion conclusively, that Peter did not become archdeacon until about 1206 and was succeeded by Walter Fitz Walter in 1212. The list in Le Neve's *Fasti* is hopelessly misleading.

¹The late Achille Luchaire contributed a paper on Peter of Blois to the *Seances et travaux* of the *Academie des sciences morales et politiques* (March, 1909). It should be remembered that Peter, as the catalogues of medieval libraries show, was probably known as a moralist and theological writer, rather than as a politician. Dr. Martin Grabmann has a page on his intellectual attitude in his *Geschichte der scholastischen Methode*, ii. 120. The later forgery known as Pseudo-Petrus is in its way a tribute to Peter: he was remembered in the Benedictine houses of the English Midlands. See Liebermann's paper 'Ueber Ost-Englische Geschichtsquellen' in the *Neues Archiv*, xviii. 253, 263 (1893).

²See the note on the MSS. of Peter's letters in the recent catalogue of the MSS. in the Royal Library, British Museum, i. 273 (à propos of MS. 8 F. xvii).

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Dr. Robinson points out that 'we have only two letters written by Peter in the name of Archbishop Hubert Walter. The first is addressed to William archbishop of Rheims, and it begins with a graceful reference to the peace made by his intervention between the English and French Kings.' This, it is suggested, may refer to the negotiations of 1197. We are inclined to see a reference to the important treaty generally known as the treaty of Louviers of January, 1196. Great care had been taken with this short-lived but elaborate settlement, and the archbishop of Rheims is mentioned in it in a way which suggests that he had a share in the preliminary discussions.¹

The appendix on the early career of John Cumin, archbishop of Dublin (pp. 90-99) and the essay on Bishop Jocelin and the Interdict, based upon a paper read before the Historical Congress held in London in 1913, are also concerned with affairs of more than local interest. Bishop Jocelin and his brother, Hugh Wells, bishop of Lincoln, stayed at their posts during the great Interdict imposed by Innocent III. on England in 1209, and did not give up hope of a settlement until King John was excommunicated. By concentrating his attention on their actions during this unhappy period, Dr. Robinson is able to study the history and effects of the Interdict with a better sense of proportion than is usually shown. The career of John Cumin takes us back to the reign of Henry II. and the great controversy which divided Europe between Alexander III. and the Anti-popes. John was no monk of Evesham, as he is usually described, but an active clerk in the royal household. Dr. Robinson makes no attempt to trace his origin, and speculation on such matters is futile: but it seems worth while to hazard the suggestion that he was connected with the famous chancellor of David of Scotland, William Cumin. William had been trained by Geoffrey, chancellor of King Henry I.; the Scottish king 'had taken his chancellor straight from the English chancery.'² We now know through Dr. Robinson's researches that John Cumin when he comes into view (1163), was a clerk in the household of Henry II. These facts make it at least possible that, when he rose to eminence, William had recommended a young kinsman to the young King Henry.³

The remarkable essays on the Saxon abbots of Glastonbury, the first deans of Wells and the early Somerset archdeacons are in some respects more important as contributions to English history than the papers already noticed. They make hard reading, and most of the detail will be of little interest to the generality of students. But the final essay is a contribution

¹ *De domo Castellii novi Turonis edificanda, faciemus ad consilium archiepiscopi Remensis et Drogonis de Melloto.* This is from King Richard's original of the treaty (Delisle, *Cartulaire Normand*, No. 1057, p. 277).

² J. H. Round, 'The Origin of the Comyns,' in *The Ancestor*, No. x. p. 108 (July, 1904).

³ On the career and connections of William Cumin see Dr. Round's paper mentioned in the previous note. It may be noted that there was some connection, as yet untraced, between the Cumins of Snitterfield in Warwickshire and Scotland (Round, 'The Cumins of Snitterfield,' in *The Ancestor*, No. ix. p. 148, April, 1904).

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of the first importance to the study of Anglo-Saxon charters, and the others are of equal value as an addition to the constitutional history of the Norman Church—of that system of administration which spread from the reforms made by St. Osmund, the Conqueror's nephew, at Salisbury. It is only by such work as this that the way can be cleared for new editions of the *Fasti Anglicanae Ecclesiae* and the *Concilia*. The growth of ecclesiastical property, the delimitation of diocesan divisions, the assertion of capitular independence, the rights and duties of the holders of prebends, episcopal relations with the great monasteries, are a few of the matters upon which the Dean casts the hard, clear light of his learning. On one problem he is wisely silent. He avoids any discussion of the early relations between Glastonbury and the Irish Church. This problem awaits the attention of the new Celtic learning, and we understand that, in the opinion of some competent scholars, the evidence is not quite so nebulous as is usually supposed. They will welcome the Dean's masterly criticism of the records which baffled the wisdom of William of Malmesbury, and especially his demonstration that two corrupt charters, preserved in the fourteenth century *Secretum* of abbot Monyngton, retain fragments of very early lost originals. Here, embodied in the language of the seventh century, can be traced quotations or recollections of Old Latin forms, which seem to point to the 'existence in Glastonbury or elsewhere in Wessex of a copy of the Pauline Epistles with a 'Celtic' or a 'mixed' text' (p. 52).

F. M. POWICKE.

THE COLLECTED HISTORICAL WORKS OF SIR FRANCIS PALGRAVE.
Edited by his son, Sir R. H. Inglis Palgrave, F.R.S. Volume VIII.
Truths and Fictions of the Middle Ages. Pp. xxxviii, xiv, 295. Royal 8vo. Volumes IX. and X. *Reviews, Essays and other Writings*. Pp. xxxiii, 617; xxiv, 466. Royal 8vo. Cambridge: University Press. 1922. 42s. each.

THESE three handsome volumes complete the magnificent shrine which the son and grandson of Sir Francis Palgrave have erected to his memory. One volume, called *Truths and Fictions of the Middle Ages*, contains the historical novel published in Palgrave's lifetime. In this, under the name of 'the Merchant and the Friar,' Roger Bacon and Marco Polo travel about England, and witness various thirteenth century sights. In the other 'Three Generations of an imaginary Norfolk Family,' which is now published for the first time, are made an illustration of historical institutions and customs, strung on a thin thread of narrative. Unluckily Palgrave, with all his gifts, had no conception wherein lay the excellencies of an acceptable novel. He has neither a story to tell nor characters to unfold. His crying sin of discursive irrelevance bewilders rather than instructs. It is therefore impossible to be entirely out of sympathy with the various publishers who rejected 'the Merchant and the Friar' as unreadable, for that is what his reviewer has found to be the case. Mr. Hamilton Thompson has judiciously edited these works of fiction, and has wisely abstained from the elaborate annotation which characterises the other volumes of the reprint. For his brief introduction

there is little but praise, though he holds rather unsound views as to the importance of tenure in chief.

The other two volumes contain reprints of Palgrave's reviews, essays, and other writings. First come Palgrave's introductions to the *Rotuli curiae regis* and the *Ancient Kalendars and Inventories of the Exchequer*. The rest is taken up by articles mainly from the *Edinburgh* and *Quarterly* Reviews. Some of these reviews are well worth reading, for they give Palgrave at his best, and that is very good. Thus his article on Anglo-Saxon history, published just ninety-six years ago, is most illuminating, and shows what a pioneer of progress Palgrave was in those days. Even more instructive is the article on 'Hume and his influence on history,' twenty years younger, but still written when Hume was looked upon as the great general historian of England. Equally interesting from another point of view are articles on Norman architecture, written in 1821, and on the fine arts in Florence, written in 1840. Apart from their readableness, most of these ancient contributions to magazines have great significance for the history of history, and some of the points made by them are not without value for us. These two volumes have been edited by Mr. H. E. Malden whose notes, though shorter than those of preceding volumes, might with advantage have sometimes been made still shorter.

T. F. Tout.

THE LIFE OF JAMES CAMERON LEES, K.C.V.O., D.D., Minister of St. Giles' Cathedral, Edinburgh, Dean of the Order of the Thistle, Chaplain to their Majesties Queen Victoria, King Edward and King George. By Norman Maclean, D.D. Pp. xx, 459. With 8 illustrations. 8vo. Glasgow : MacLehose, Jackson & Co. 1922. 21s.

DR. CAMERON LEES deserved a good biography and he has obtained it. Dr. Maclean is a master in the art of picturesque description, especially when his subject is the Highlands and Highlanders. He is in full sympathy with Dr. Lees' moderation, reasonableness, catholicity of view and steady attention to duty. We may not have here the story of a typical Scottish Churchman : such are usually prominent in Church courts and identified with some branch of Church work. Dr. Lees for a time abstained even from Presbytery meetings, and declined the office of Moderator. His position in the Church of Scotland reminds us of that of Dean Stanley in the sister establishment. Both were men of varied gifts, although not particularly distinguished for theological learning. They were both fond of travel and society, and deeply interested in the ancient buildings with which respectively they came to be so closely associated, and over which they watched with unceasing care. Both were the trusted friends of their queen. Above all they were catholic in the true sense of the word, lovers of peace and unity.

John Cameron Lees was born in 1834 in Highgate, London. His mother's name was Cameron, and she was a great-great-granddaughter of Sir Ewen Cameron of Lochiel, whom Macaulay has called the Ulysses of the Highlands. Lees' early boyhood was spent in London, but after the Disruption of 1843 his father was offered and accepted the parish of

Stornoway, and to the island of Lewis the family accordingly went. Here the boy had an early experience of the cloud of intolerance and superstition hanging over the Highlands, and no doubt it influenced his future views. A farther experience, and still more trying, awaited him when a few years later he was appointed to a parish in Strathconnan. Later the Marquis of Abercorn presented Mr. Lees to the second charge of the parish of Paisley. He became the historian of Paisley Abbey, and doubtless did much to awaken public interest in it.

But the time came when he was to remove to a still more interesting church. He was called in 1877 to the cathedral of St. Giles' in Edinburgh. St. Giles', like the Abbey, had suffered much in the evil days. After the Reformation as many congregations were packed into its divisions as possible. Then in the early part of last century an architect, well supplied with money, was let loose upon this unhappy building, and literally defaced it, while pious citizens carried off the carved stones to ornament suburban gardens. When Lees came to Edinburgh the work of restoration had begun, the High Church proper having been restored to something like its original condition. In 1883 the work was completed.

Dr. Lees had large ideas about St. Giles'. It was to be a temple of reconciliation. We find memorials being erected to that dean at whose head a stool was thrown, and to the lady who threw it. Then it was to be a truly national church, within which representatives of the nation might gather together upon occasions of both joy and mourning. The pulpit was not to be confined to Church of Scotland ministers. Anglicans and nonconformists have spoken from it. Dr. Lees' ideas were carried out, and the character of the church is being admirably maintained by his distinguished successor. For more than thirty years Dr. Lees remained at St. Giles'. He celebrated his jubilee as a minister by revisiting Strathconnan and preaching in a greatly improved church and to a congregation partly composed of Wee Frees. In 1886 Dr. Lees succeeded Principal Tulloch as the friend and adviser of the Queen, just as Tulloch himself had succeeded Norman Macleod. These three men were very different types, but they were all liberal churchmen. The Queen seems to have had a great regard for Dr. Lees. She writes, 'You know how I lean on you and upon your brave strong Highland heart.' He was also Principal Tulloch's successor in the office of Dean of the Thistle. Dr. Lees retired in 1909 to his beloved Highlands, and to enjoy the society of a life long friend.

The impression which this book will give of him is that of a man of independent judgment, strong common sense and possessing no small share of Celtic imagination and eloquence, but at the same time of a somewhat peculiar temper, which sometimes brought him into difficulties. Viewed as a chapter of Scottish Church-history, the chief value of this biography consists in the able account which it affords of the religious state of the Highlands after 1843.

W. G. SCOTT MONCRIEFF.

64 Williamson: History of British Expansion

A SHORT HISTORY OF BRITISH EXPANSION. By James A. Williamson. Pp. xxviii, 647. With 21 maps. London: Macmillan & Co., Ltd. 1922. 25s.

THE charm of *Hakluyt's Voyages* is perennial. It is one of those books which we find ourselves going back to, almost by stealth, in search of a rare pleasure which no other type of literature can afford. These voyages are better than mere travel, because they have the glamour of adventure and great purposes, they are better than *Robinson Crusoe*, because they are real, and it all happened. Something of this fascination attaches, by the very nature of the case, to this book. It contains a greater mass of adventure, and of more moving and thrilling experience by land and sea than could be collected from any other subject matter on earth; for it sets forth the acts and deeds of individuals and companies of an imperial people in every quarter of the globe. Beginning with overseas commerce in the Middle Ages, Mr. Williamson, with great patience and industry, has collected the facts regarding the putting forth, the development and the subsequent fortunes of the various colonies, settlements and dominions of the British Crown. The Tudor period is dealt with in considerable detail. In the seventeenth century, and in the American continent especially, the story deepens in interest. The rise of Virginia and Maryland was followed by the Puritan colonisation in the north. In the eastern hemisphere the East India Company began its wonderful competition with the Dutch, and the early struggles of the leaders of that association form one of the most interesting passages in the volume. Nor is Australia behind any part of the world in the fascination of early adventure and the trials of early administration. Equally arresting are the chapters to which Mr. Williamson gives the titles of 'The Clash of Empires' and 'The Changing World.' American Independence, of course, marks a broad parting of the ways, and Canada is dealt with in detail. Altogether the book is a most interesting one, and contains a great mass of information to collect which from other sources would be a long and difficult task. Mr. Williamson adds a very full list of authorities to the successive parts of his history, and maps, many of them coloured, make it easy for the reader to follow the narrative.

DAVID J. MACKENZIE.

GLENGARRY'S WAY AND OTHER STUDIES. By William Roughead. Pp. xvi, 308. With 9 illustrations. Royal 8vo. Edinburgh: W. Green & Son, Limited. 1922. 10s. 6d.

THERE are two sketches in Mr. Roughead's latest book of particular interest to students of Scottish historical characters, one relating to Glengarry and the other to Lord Braxfield.

The picture drawn of Glengarry shows him as an imperious, hot-headed and yet simple soul obsessed with the idea of his own importance as a Scottish chieftain and head of his clan, and very ready to wreak summary vengeance upon all who failed to show what he deemed a proper deference to his position. Scott, who possessed a strong friendship for the man, describes

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him as 'a kind of Quixote in our age,' and adds that he seems to have lived a century too late. Certain it is that whenever Glengarry carried his ideas of the feudal powers of a chieftain too far he was haled before a legal tribunal which, while unsympathetic enough to clip his wings, never really dared punish him as he deserved. The greater part of the sketch deals with Glengarry's trial upon the charge of murder. He had killed Lieut. Macleod in a duel, and, while the verdict was acquittal, it seems to have been a near thing, the public generally not sharing the jury's lenient opinion of his culpability. As he grew older Glengarry's views mellowed and, at the time of his death, he had become a peaceful and law-abiding citizen. Unquestionably a man of parts and with many endearing qualities of mind and heart, poor Glengarry was doomed to live in an age which had become too democratic to suffer his pretensions lightly, and yet not democratic enough to deal with them, and him, by ridicule and laughter.

The present-day opinion of the character of Lord Braxfield is founded chiefly upon what Lord Cockburn had to say of him, modified to a certain extent by Stevenson's picture of *Weir of Hermiston*. Mr. Roughead, however, being able to bring the perspective of time to bear upon his researches, finds much to praise and little to blame in the life of the famous judge. Cockburn's tirade against Braxfield was so obviously due to political bias that it is gratifying to observe him being severely trounced and his petty spite so keenly and forcibly exposed. Braxfield is proved to have been strict but admirably just on the Bench and very sound and trustworthy in his legal opinions, while as a man his courage was high and his personal honour unassailable. This vindication of a much maligned man is one of the best things Mr. Roughead has ever done.

The remainder of this most enjoyable book is made up of sketches dealing with varied aspects of crime and trials and all having a Scottish bearing. The most interesting is undoubtedly 'Locusta in Scotland: a Familiar Survey of Poisoning as Practised in that Realm.' Infinite labour has been expended on this survey, and practically every case of criminal poisoning brought to trial in Scotland from 1502 down to the present day is referred to, while such *causes célèbres* as that of Madeleine Smith, Dr. Pritchard and Eugene Chantrelle are examined with some detail. Many old and most interesting trials are recalled, for example that of Katherine Nairn, a lady considered by Mr. Roughead to be the flower of his flock, though personally I would be inclined to award the palm to another Katherine, wife of Munro of Foulis. The case of Lady Glamis, who was burned in Edinburgh on a charge of attempting to poison the king, proves that, in the olden days, an accessory to a murder was punished with the same severity as the principal; witness the sentence on Alexander Makke convicted of making and selling poison, and of concealing Lady Glamis' treason, who was condemned to have his ears cut off and to be banished for life to Aberdeen! To the criminologist 'Locusta in Scotland' will become a *vade mecum* of Scotch poisoning.

There are two subjects upon which Mr. Roughead is a recognised authority, crime and Scotland, and when they are blended, as in this

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volume, and stories, biographies and studies related in the author's inimitable style, the whole forms a book every page of which is a sheer delight alike to the criminologist, the historian or the mere gentle reader.

D. A. MAXWELL.

THE AGE OF THE REFORMATION. By Preserved Smith, Ph.D. Pp. xii, 861. Demy 8vo. London : Jonathan Cape. 1922. 30s.

WRITTEN in a style that is easy to read and which makes one think, we welcome this book on the Reformation. The writer tries to be impartial—but who can be impartial on such a subject?—and even his faults lean to the Puritanic (virtue's?) side. He is severe on the Jesuits and on Mary Queen of Scots, and does not exaggerate when he speaks of the horrors of witch burning, whatever he may do about the Inquisition. He praises Luther's work, while yet pointing out many odious sides of his nature. Perhaps we may say his canvas is too vast (the book is a large one) to be uniformly good, but it assuredly interests, and the manifold quotations show that it is a work of vast study. He has an excellent portrayal of the solemn and inevitable procession of political events, and it is always interesting to read his account of the Religious changes, the teaching of the Church, or the new reading of the Bible, which brought them into being.

A. FRANCIS STEUART.

LES INDO-EUROPÉENS: PREHISTOIRE DES LANGUES DES MŒURS ET DES CROYANCES DE L'EUROPE. Par Albert Carnoy. Pp. 256. 8vo. Bruxelles : Vromant & Co. 1921. 7 francs.

THERE was need of such a work as this, though more on the lines of Tylor's *Anthropology*, and based rather on archaeology direct than on the slippery inferences of the philologists. M. Carnoy, a professor of Louvain, writes this addition to the 'Collection Lovanium' with a well-stored notebook of sources, and especially of the mythologies and folklore of the western world in its contact with the east. His chief questions are three. 1. What was the Indo-European cradle? 2. Can we trace the descent of the European equipment in the oldest utensils and arms? 3. Do the laws and the vast body of popular beliefs bear any relation to those of Asiatic peoples? His conclusion that the origins were not Germanic but from the vicinity of the Black Sea will be readily accepted. But the inferences he draws mainly from etymology, to explain the transmission of the implements and weapons of prehistoric man, and still more his arguments as to ancient beliefs, customs, and particularly the names of deities, smack too much of Max Müller and solar myths to carry scientific conviction. More history and archaeology are requisite.

M. Carnoy's speciality is his extension of the etymological links which he perceives in the vocabularies of Europe carrying in themselves evidences of orientation and of travel. In his preface he lays stress on his discussion of 'croyances' as the most original section of the book. Its value is consider-

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able, although its Aryan supports are often merely verbal. The *Golden Bough* strangely makes no appearance in the bibliography.

As a whole the work attractively re-opens the discussions of the confluence of India, China and Greece towards which the new claims being put forward for Central Asia will necessarily bring fresh and enlightening tests.

GEO. NEILSON.

THE COTTON CONTROL BOARD. By Hubert D. Henderson, M.A. Pp. xiv, 74. Royal 8vo. Oxford : at the Clarendon Press. 1922. 5s.

MR. HENDERSON was Secretary of the Cotton Control Board from June, 1917, to January, 1919. It is to be hoped that others who had an inside experience of the working of 'controls' during the War will tell us as frankly and as clearly as he does what the problems were and how they were met. He is particularly successful in conveying to the reader a vivid impression of the peculiar nature of the industry and—what is still more important—of the temper of the people engaged in it. That cotton is highly localized and entirely dependent on foreign supplies of raw material are well-known facts. They came to have a new significance when tonnage had to be cut down by the Ministry of Shipping, for shortage of supply could not here be compensated for by opportunities of alternative employment. But the very high degree of localization did much to assist to solve the problems which it created. Mr. Henderson constantly refers to the pride in the industry which actuated the conduct of employers and employed. The Control Board was regarded as a Lancashire institution. Neither the opinions nor the methods of Whitehall were held in any respect. The limits set on the amount of machinery to be worked and the compulsory levies imposed on firms allowed to exceed the percentage had a severely practical side. There was, however, another side. The levies were mostly paid by 'Egyptian' spinners and disbursed as unemployment benefits among operative weavers. This was a genuine recognition of solidarity. But Mr. Henderson does not leave us with the impression that the relations between employers and employed ever had any weak sentimentality about them. They got on so well because they respected one another as hard bargainers round the table. It is interesting to notice what confidence was reposed in the trade union officials who paid the unemployment benefit provided by the Board to the unionists and non-unionists alike. It is also significant that wages did not keep pace with the rise in the cost of living in this industry. The employers alleged that the fact that they paid the levies towards unemployment ought to be taken into consideration in arriving at wages agreements. The operatives were not slow to draw the conclusion that the levies at least in part represented what they had not received in wages. In September, 1918, differences led to the spinners' strike, which lasted a week. The causes of this stoppage are fully explained by Mr. Henderson. It needs a close knowledge of the workings of control to understand the dispute.

J. F. REES.

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BRITISH FLAGS : THEIR EARLY HISTORY, AND THEIR DEVELOPMENT AT SEA. With an Account of the origin of the Flag as a National Device. By W. G. Perrin, Admiralty Librarian, Secretary of the Navy Records Society. Illustrated in colour by Herbert S. Vaughan. Pp. xii, 207. With 13 Plates. Large 8vo. Cambridge : University Press. 1922.

THE first attempt to deal with the development of the flag at sea in a scientific spirit emanated from Germany, and this not until 1912. The reproach to the British nation thereby implied will be more than removed by the publication of the present volume. The labour and research necessary for its production must have been very great, and all interested in the subject are much indebted to Mr. Perrin for having planned and executed so useful and instructive a work. Although he has concentrated upon the history of British naval flags, he devotes his first chapter to a disquisition upon the origin of the flag, and how it became a national symbol. In this he shows that some sort of standard or emblem was used thousands of years ago by the early Egyptians, and traces the continuous use at sea of a symbol of naval authority from the fifth century B.C.

It is, however, to the maritime states of Italy, especially Genoa, Pisa and Venice, that we are indebted for the first use of flags as emblems of nationality, a usage that had become recognized by the end of the thirteenth century. This chapter includes a very useful glossary of the names of various flags or flag-like emblems, the word 'standard' receiving special attention and explanation. Among other curious items of information we learn that the name of the celebrated black and white banner of the Templars (*Beauseant*) is a corruption of *balzan*, a piebald horse, the banner being called *Vexillum balzanum* from its colour.

The history of early English, Scottish and Irish flags is next dealt with, a comprehensive narrative being given of how the crosses of St. George, St. Andrew and St. Patrick came to be adopted as the national flags of these countries. This leads to the combination of the three flags in one, the present Union Flag of Great Britain. This did not assume its present form until 1801, when the red saltire of St. Patrick was added to the flag formed of the cross of St. George and the saltire of St. Andrew. Mr. Perrin points out that the Union Flag 'is never made in strict accordance with the original design,' and also that the name by which it is generally, in fact almost universally, called is a mistake. Correctly speaking, a 'Union Jack,' is a *small Union Flag*, intended to be flown in one particular place, viz. the bow of one of H.M.'s ships.

Under 'Flags of Command' the royal banner, commonly known as the Royal Standard, is first dealt with. Mr. Perrin explains that as the use of the royal arms was restricted to flags of banner form, the name of 'standard,' when qualified by the adjective 'royal,' became transferred to the royal banner of arms, not only in popular speech but in official usage. The use of the Royal Standard at sea in early times is somewhat obscure, but after the middle of the sixteenth century it seems to have been regularly flown only by the Lord High Admiral. After 1702 it was definitely superseded as the Lord High Admiral's flag by the 'Admiralty

Flag' of red, with the 'foul anchor' in yellow. When the sovereign himself is afloat the Admiralty Flag is flown at the fore, the king being the source from which the Lord High Admiral's powers are derived, the Royal Standard at the main, and the Union Flag at the mizzen. It will be remembered that these flags were hoisted on the *Albert and Victoria* when King George was on board that vessel in the Clyde in 1920.

The evolution of admirals' flags forms an interesting chapter, and the division of the fleet into the red, blue and white squadrons, distinguished by flying the red, blue and white ensigns respectively, is also described. This arrangement lasted until 1864, when it was discontinued as being of no practical advantage. It had in earlier days been found a disadvantage on occasion, owing to the French ensign having been white prior to the adoption of the tricolour after the Revolution. This led at times to a confusion between ships of the white squadron and of the French fleet, one of Lord Howe's ships in the battle of the 1st of June, 1794, being fired upon by two other British ships that had mistaken the white ensign for the French national flag, which at that date was white with a tricolour canton.

As to merchant ships, since 1824 the red ensign alone has been the legal national colours of British merchant vessels, but the use of this ensign as their distinctive flag dates from 1674. The East India Company exceptionally continued to use a red and white striped ensign until after 1820. At the same time there is nothing in the Merchant Shipping Act to prevent any ship wearing any fancy flags it likes, provided they are not distinctively national and do not imitate the flags of the Royal Navy. They are, however, compelled, under that Act, to display the red ensign 'upon the proper occasions.'

A long and important chapter is devoted to Flag Signals, the gradual development of which is traced. From this we find that while in 1746 there were 16 flags in use to express 144 signals, in 1780 about 50 flags provided for some 330, while the Trafalgar signal book of 25 years later contained upwards of 400. From that time on there was a rapid improvement, in the first instance largely due to the efforts of Sir Home Popham. It is interesting to note that the precursor of modern commercial codes was drawn up in 1817 by Captain Marryat, the novelist. At the present day the code consists of 26 flags, with which about 375,000 signals can be made.

The closing chapter treats of 'Ceremonial and other Usages.' The ancient custom of the 'Naval Salute' is adequately dealt with, except that the reason assigned for its abandonment early in the last century is hardly convincing. We had always understood that its discontinuance was largely due to the action, or rather inaction, of a naval commander of the period, of high rank and influence. The instructions given to naval officers up to 1805 are contained in the *King's Regulations*, and are quoted by Mr. Perrin at length. These instructions are uncompromising, and the area within which they were enforced extended to Cape Finisterre. Any ship or ships in these seas was expected, on meeting any of His Majesty's ships, to 'strike their Topsail, and take in their flag'—failing which they were to be compelled to do so.

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The manner in which surrender at sea was denoted at various periods is discussed, and instances given of the methods in use from time to time, until the lowering of the colours became the universal signal. An interesting section deals with the use of false flags as a means to deceive or entrap an enemy. Some notable instances are given, one of which (the *Sybille* and *Hussar* in 1783) reads like an extract from one of Marryat's novels or *The Autobiography of a Seaman*.

The number and size of flags flown in former times is a feature of pictures of old naval engagements, some of the ships seeming to carry as much bunting as canvas. In this chapter details are given by which we find that in 1742 the largest ensign was 51 feet long and 28 feet deep, which compares with the largest modern ensign of 33 feet by 16½. Pendants now vary from 3 to 20 yards in length, which is moderate compared to the medieval 'streamers' of 30 to 32 yards long. It must be kept in mind that the ships that flew these enormous flags in the old days were of comparatively small tonnage.

Besides being a storehouse of facts, *British Flags* is eminently readable, and the illustrations well coloured and most helpful. T. F. DONALD.

THE STUDY OF AMERICAN HISTORY. By Viscount Bryce, O.M. Pp. x, 60. With one illustration. Cr. 8vo. Cambridge: University Press. 1921. 3s. 6d.

EVERYTHING written by the late Lord Bryce is of exceptional value, and this applies peculiarly to this little work, which is a reprint of the inaugural lecture of the Sir George Watson Chair of American History, Literature and Institutions. For it is a kind of summary of the ideas and conclusions to which the author was led not only by study and culture, but by the exceptional opportunities which lay to his hand of forming a judgment of the great American people.

In clear and concise language he traces the Americans from their beginnings. He deals with many problems relating to race, to environment and to constitutional development in America, which it is of the first importance that we should study. The story is one of absorbing interest, and the lecture admirably and fittingly inaugurates that Professorship of American History, Literature and Institutions which we owe to the munificence of Sir George Watson, and which supplies a conspicuous want in our educational system. An appendix explains fully the circumstances of the institution of this Chair, and if this little volume is followed by others of the same type, as is promised, they will form an addition to our educational resources which it would be difficult to overestimate.

DAVID J. MACKENZIE.

MONASTIC LIFE IN THE MIDDLE AGES, with a Note on Great Britain and the Holy See, 1792-1806. By Cardinal Gasquet. Pp. viii, 342. Cr. 8vo. London: George Bell & Sons. 1922. 8s. 6d.

It is intensely interesting to study here these excellently written chapters on the past history of the monastic life, recounted by a scholar and a

Gasquet : Monastic Life in the Middle Ages 71

prince of the Church, himself a Benedictine. We read of the growth of the Religious Orders : how St. Alban's shrine was adorned, how its Abbot, William Wallingford, was traduced by his own co-religionists and subsequent historians, and is only now vindicated. We learn how the monks taught the people, how they were fed ('onions with honey' is a medieval *recipe* which we recommend to the experimentalist), how they made books, and were biblical scholars. We also hear about Pilgrimages beyond the Sea. These are but a few of the subjects touched on. Perhaps more important historically, although less connected with the religious life of the country, which was robbed of much when the monasteries lost their hold and were suppressed ; is the chapter criticising the assertion that Adrian IV. gave Ireland to England by his famous Bull, throwing the blame rather on Henry II. There is also the study of the relations between Great Britain and the Vatican during the Napoleonic wars. This is instructive on account of the information it gives about the Scot, Mg^r. Erskine (afterwards Cardinal), and his little known diplomatic mission, which came about through Mr. Hipposley, whose name occurs so frequently in the accounts of the life of the last of the Stuarts in Rome. A. FRANCIS STEUART.

THE NEWTON STONE AND OTHER PICTISH INSCRIPTIONS. By Francis C. Diack. Pp. 64, with three Illustrations. Crown 8vo. Paisley : Alexander Gardner. 1922.

THIS is a painstaking study of the inscriptions on the Newton Stone, which originally came from Pitmachie, and which has one inscription in Ogam and another in the cursive Roman lettering of the first three centuries A.D. These inscriptions have nothing to do with each other. The Roman ones commemorating two bygone Celts, one 'Ette,' the other 'Elisios,' and the Ogam one 'Iddaiqn timer' ; all in Pagan times. The writer says much that is interesting on the use of the Roman letters in Pictish Scotland and the comparison of Ogam in Scotland and Ireland.

MACBETH, KING LEAR, AND CONTEMPORARY HISTORY. By Lilian Winstanley. Pp. vii, 228. Crown 8vo. Cambridge : University Press. 1922. 15s.

MISS WINSTANLEY here carries on her studies of the plays of Shakespeare in relation to the history of his time. She commenced with the connections between Hamlet, James I., and the Earl of Essex, and in this book she collects evidence that Macbeth has much in it drawn from the career of Mary, Queen of Scots, grafted on to an old tale deliberately altered. She believes that the interest in the English succession inspired its plot, and that the witch scenes were drawn from the witch plots under Francis, Earl of Bothwell. She sees in the play, too, allusions to the horror of the massacre of St. Bartholomew, and also the fears inspired by the Gunpowder Treason. Much the same critical method is applied to 'King Lear,' into which is woven some protestant symbolisms. It is worth while to read the extracts the writer quotes and her deductions therefrom, as, though her zeal in finding historic clues may sometimes carry her away, she is sincere and it is

possible that commentators have hitherto too often neglected what was happening round the dramatist and his audience.

A HISTORY OF ENGLAND, THE NINETEENTH CENTURY AND AFTER, 1815-1921. By Cyril E. Robinson. Pp. xii, 364, with 15 Maps and Plans. Crown 8vo. London : Methuen & Co. 1922. 5s.

ONE is not quite sure that this does not fall into the abyss of being written too soon after the Great War to know the true perspective. Still it is conscientious, well written, careful, and little swayed by passion. It has quickened in us greater interest to re-read the account of the World War, to follow its progress, so well told here, and to recall each momentous day. The book is wonderfully compressed. The maps and plans are most helpful.

THE LAWS OF THE EARLIEST ENGLISH KINGS. Edited and translated by F. L. Attenborough, M.A. Pp. xii, 256. 8vo. Cambridge : University Press. 1922. 15s.

It is a privilege to see such a careful scholarly work. It confesses it does not compete with that of Liebermann, but it is of more use to our scholars ; for here they find the laws of the Saxons, the Kentish laws, the laws of Ine and Alfred, the Danish treaties, the laws of Edward the Elder, and Athelstan, not only in their very difficult (and strangely enough to us more than foreign) Saxon which varied from age to age, but with an excellent translation. It is curious to be reminded how every part of a man's body had a certain value if hurt, and what a large place Ordeal played in these early times. The lot of a slave seems to have been a thorny path to thread. The editing of this book cannot be overpraised nor the care given to the notes and the index.

CLAN WARFARE IN THE SCOTTISH HIGHLANDS. By David N. MacKay. Pp. 288. Paisley : Alex. Gardner. 1922. 7s. 6d.

THIS is a good book. In the introduction the writer tells us much that is useful about the complicated constitution and ruling of a Highland clan, and how the chiefship was originally by no means hereditary, but the selection of the member of the ruling family most useful for the food supply of the clan and to lead it into battle. These battles and what led to them are well narrated. Mr. MacKay defends the clans from the charge of treachery, yet treachery is read on many pages. The Macdonalds appear in much of the warfare, the MacLeods against them in the terrible affair of the 'Cave of Eigg,' and the Macleans at the 'Rhinns of Islay.' The ruin of the Clan Gregor is explained in the excellent account of their massacre of the Colquhouns at Glenfruin, the Campbell cruelty to the Lamonts in the massacre of Cowall had the tacit consent of their chief, Justiciar of Argyll, and seems to have had a 'religious' origin ! One of the most romantic stories in the book is 'The Well of the Seven Heads,' where Iain Lone, the Gaelic poet, avenged the murder of Alexander MacDonald, 13th of Keppoch. All the accounts are worth study.

THE ENGLISH VILLAGE. The Origin and Decay of its Community. An Anthropological Interpretation. By Harold Peake. Pp. 251. With 14 Illustrations. 8vo. London : Benn Brothers. 1922. 15s.

THERE is far too much in this book about the origin of the English village before it was planted in England. So we are led into digressions about village communities from China to the Danube Basin as well as much unnecessary information on the 'progressive period of culture' and the races—especially 'The Nordic'—of Europe. When the writer really buckles to his task about the village community in Britain he becomes less nebulous, but even then the origins seem a little cloudy. He ascribes them to an invasion of 'Nordic' men sometime about 1150 B.C., and holds that they were not very much affected by the Roman occupation. The Saxons made them a community of ceorls (free men) under a gesith (lord), and their position was considerably altered under the Danes, through whom, perhaps, the 'one field' system became prevalent. The chapters on the Saxon village community, the manor, its decay, and the evolution of the parish make interesting reading, and we wish they had been extended at the expense of the chapters at the beginning of the book.

THE MASSACRE OF GLENCOE. An Account of the Tragedy of 13th February, 1692, rendered in dramatic form. By Malcolm MacInnes, M.A., LL.B. Pp. 94. Cr. 8vo. Paisley : Alexander Gardner. 1922.

THIS is an attempt at reconstruction (not creation) of the tragedy of Glencoe. The lines at the commencement, a description of the Highlanders

' Rushing to ruin for a dynasty
That crushed the aspiration of the Celt,'

sums up a good deal of Highland history.

THE ANNUAL REGISTER. A Review of Public Events at Home and Abroad for the year 1921. Edited by M. Epstein. Pp. xii, 332, 180. Demy 8vo. London : Longmans, Green & Co. 1922.

STARTING a new series under editorship by Mr. Epstein this standard annual repertory and diary of a critical twelvemonth begins its English history with a Period of Depression, following up with the Coal Strike, the Truce in Ireland, and the foundation of the Irish Free State. On Foreign and Colonial history the report for France is that the year has been one of 'slow recovery' : for Germany of 'gloom redeemed only by a few bright spots' in which a growing stability is pre-eminent : for Russia of a famine year of chaos in which, notwithstanding, progress is registered in foreign trade and hope of federative Soviet adjustments. In the United States the defeat of President Wilson showed the restiveness of the populace under their naval and military burden. Australia and New Zealand alike surprise by the magnitude and variety of artesian and mechanical projects, wool and wheat schemes, wage revision adumbrations, bridge construction, road programmes and mining and fishery enterprises. In spite of political

side currents not easily controlled the Commonwealth seems to be steadying its footholds of reconstruction.

The diary of events and chronicle of literature, science, art, commerce, law, and public document contains much that discloses the progressive mind of the specialists in the experimental areas of physical research. The Rhodesian skull offers too narrow a base for large inferences. Re-estimates of the age of the earth include mathematical calculations giving 2000 million years as the interval since the solidifying of the earth's surface.

The *Annual Register* under its changed auspices maintains with added incisiveness of narrative and diction its weighty world-epic-story, earning for the new series the continued confidence won by the patient accuracy of its predecessors.

The Battle of Brunanburh, by the Rev. J. B. M'Govern (pp. 112-137. Manchester: Sherratt & Hughes, 1922) is a reprint from the *Transactions of the Lancashire and Cheshire Antiquarian Society*, vol. xxxviii. 1920, and re-surveys the problem of this ancient place of slaughter, with its long-drawn controversy of site. Of his six and twenty pages, about eighteen are devoted to a discussion of the case set up for Burnswark in these columns in 1910 (*S.H.R.* vii. 37) and give the impression that that argument has presented to his critical mind the most real and circumstantial factors of proof. Mr. M'Govern has some rubs for the Dumfriesshire contention, of which nevertheless his candid analysis may well be accepted as a discriminating and generally favourable summary. On such a direction to the jury of archaeology, especially if *more Anglico* the verdict of Not Proven were barred, it is more than probable that Dumfriesshire would hold the field. The latest drift of opinion lies that way. For instance, the new volume of the *Cambridge Medieval History* (vol. iii. 366) speaks of the battle 'to be located as it would seem at Birrenswark, an old Roman camp in Annandale.' The late Mr. R. L. Bremner's essay on the subject is expected to appear shortly, incorporated in his memorial volume *The Norsemen in Alban*. In the present essay contentions for various English sites are sympathetically examined but frankly handled: (1) Mr. J. T. Marquis standing for an unlocated somewhere in Lancashire—turned down; (2) Mr. F. W. T. Tudsbery for Bromborough in the Hundred of Wirral—worth, says Mr. M'Govern, 'a little more than nothing'; and (3) Sir James Ramsay's selection of Brunne or Bourne in Lincolnshire—disposed of as a 'a laudable if futile attempt.'

The Somersetshire Archaeological and Natural History Society issue their *Proceedings during the year 1921*, less bulky but not less effectively contributory to antiquarian science than earlier examples. There are two main papers. First, Sir Hercules Read the president, puzzled (1) by the identities in flint chips unearthed in places thousands of leagues apart, and (2) by the painting and carving executed by cave men almost as far distant, hints that the Society might handle the historical and anthropological problems involved. Mr. A. C. Fryer, continuing his richly illustrated descriptive catalogue of monumental effigies in the county, deduces from the knightly figures new distinguishing points in what is known as the 'Cyclas period,' 1321-1346. The silken and folded cyclas reaching to the knees, the camail (perhaps

deriving from 'cap-mail') covering the shoulders, and the armorial-bearing, tight-fitting 'jupon' of cloth reaching to the thighs are carefully examined as it were under the microscope, with results clearing up doubts in the chronology of these military figures. A wealth of Somerset examples makes this close scrutiny of their artistic treatment yield solid inferences from comparison. The 'Jupon period' ranged from 1360 until 1410. A long barrow at Murtry Hill has been excavated, and Mr. H. St. George Gray gives plans of the site and describes the finds, chiefly consisting of flakes and scrapers of flint, fragments of Romano-British pottery and some few attenuated remains of bones. 'Supposed Neolithic' is the label for this not very fruitful burial place, patiently searched and skilfully characterised. A notice of William Turner, a Dean of Wells who was also a herbalist, is contributed by Miss Ida Roper. Born circa 1510 at Morpeth, Turner was appointed Dean of Wells in 1550; he endured exile as a reformer: reinstated under Queen Elizabeth he died in 1568. His 'Herbal,' issued in parts 1551, 1562, and 1568 is original, observant and meritorious, winning for him the very respectable title 'Father of English Botany.'

The most recent historical 'Bulletin' from Queen's University, Kingston, Ontario, is by M. Eleanor Herrington, on *Captain John Deserontyou and the Mohawk settlement at Deseronto*. It was a movement of the Niagara Mohawks in 1784 to the Bay of Quinte. They carried with them a communion service presented to their tribe by Queen Anne in 1712 and when they landed 'they upturned a canoe, covered it with the communion cloth' and setting upon it the communion plate conducted a sort of dedication service. Their chief the 'captain,' born on the Mohawk River towards 1742, survived until 1811. These little Canadian essays are sometimes shorn of their great interest to British readers by the lack of a sketch-map. Thus the localities of the captain's migration cannot without much worry be traced on an ordinary atlas.

As the new *Journal of Indian History* develops, it proves the well-stored body of material under its command. Beni Prasad now concludes his study of Mughal Government, its paragraphs on special principles, social concepts and revenue system giving a capital insight into the seventeenth century administration. Other important subjects include the Army of Maharaja Rangit Singh, described by S. R. Kohli; Vijayanagar sources for the History of the Empire (A.D. 1336-1565) by G. V. Rao, and the editor, S. A. Khan's reports of searches in the seventeenth century British Indian records and among historical MSS. in Indian libraries. This journal has an efficient staff, a wide and modern outlook, and a prospect of distinguished utility in eastern history.

Notes and Communications

SIR GEORGE PROTHERO. With the death of George Walter Prothero historical study has lost one of its soundest representatives and strongest supports. After teaching at Eton (where he had been King's Scholar), he lectured on History at Cambridge from 1876 to 1894. From Cambridge he passed to Edinburgh where he had five fruitful and distinguished years of work in the Chair of History instituted in the latter of these years. In 1899 he succeeded his brother Rowland, now Lord Ernle, as editor of *The Quarterly Review*. When war came in 1914 he at once grasped the magnitude of the issues at stake. He tried especially to direct attention to German designs in the Nearer and Middle East—designs for the mastery of the Ottoman Empire and of the lands lying between that Empire and the Austro-Hungarian frontier, while there were other and ultimate objects dangerous, not least, to Britain. He was sedulous in proclaiming both the interest and the duty of this country in opposing Germany; and interest and duty seemed to him to point the way clearly also for the United States of America. As editor of the extensive, but too narrowly known, series of 'Peace Handbooks,' and as Director of the Historical Section of the Foreign Office, he illustrated in a pertinent and notable manner the connection between history and world-politics; and in politics, as he once said, we have to do with probabilities rather than certainties.

The foundations of Prothero's historical knowledge were laid at a time when close attention was being given to the study of sources. Among Continental historians he owed most to Ranke and Sybel—influences adequate in themselves to secure a young historical teacher and writer against a contracted view in the treatment of his own nation's history. Within his own country he was fortunate in being bred up in a generation in which historical inquiry was dominated by Stubbs, pre-eminently, by Freeman and by Gardiner: the last of these he was to bring to Edinburgh to address an audience of young historical students. Like Seeley, who was his senior in the History School at Cambridge, and whose *Growth of British Policy* he prefaced with a finely-drawn biographical sketch and estimate, he recognised, as his lecture-scheme at Edinburgh showed, the importance of Britain's membership of the historical system of Europe; and from Seeley he drew part of his interest in the problem of the unity of the British Empire—a question on which he gave valuable public lectures in Edinburgh and in other parts of Scotland. His range of interests and sympathies in history and politics was remarkably broad, as even his conduct of *The Quarterly Review*

amply testifies. Polity and policy attracted him almost equally ; thought rather less than action, but endeavour as much as 'result.'

Prothero is known more widely as an editor of historical works than as an independent author. His wise and scholarly interest in historical bibliography gave him a special qualification for that responsible task. He has been joint-editor of *The Cambridge Modern History*—one of the massive historical productions of our time—and he has been sole editor of *The Cambridge Historical Series*—useful manuals. His reputation as an author rests chiefly on two books. The earlier of these is *The Life of Simon de Montfort*, published in 1877, when he was twenty-nine years of age. His first intention was merely to translate and introduce Pauli's book, *Simon de Montfort*. But independent study broadened his design and his ambition, and led him to question some of Pauli's conclusions and to make his own use of his material. His footnotes abundantly show his industry and his skill. The influence of Stubbs's *Select Charters*, published in 1870, and of the first volume of *The Constitutional History of England*, published in 1873, was strongly felt ; but, while the second volume of that great work was issued in 1875, containing the chapter on the struggle, after 1215, for the Charters, Prothero had already completed his treatment of the constitutional struggle, and was glad to find himself in general agreement with 'our greatest of living authorities.' Ever welcoming historical inquiry, criticism and advance, he would have been the first to subject to rigorous revision what he wrote forty-five years ago, expelling, it may be, his use of the expression 'the people' in his exposition of the political situation of the time, and profoundly modifying his view of the historical setting of feudalism in relation to the Great Charter. The best parts of the book are, first, the pages devoted to an analysis and estimate of the situation in 1264-5, including an examination of the claim put forward for de Montfort that he is 'the creator of the House of Commons' (*Der Schöpfer des Hauses der Gemeinen* ; and, secondly, the pages devoted, in the text and in an appendix, to that interesting item in the political literature of England—the poem on the battle of Lewes.

The other historical work by which Prothero is known is the product of riper knowledge and of much experience as a teacher, and is of greater importance—his *Select Statutes and other Constitutional Documents illustrative of the Reigns of Elizabeth and James I.*, published in 1894, shortly before his election to the Chair at Edinburgh. Prothero is, as already suggested, one of the band of students and scholars who have 'known Stubbs.' He had been a close student of *The Select Charters*—a volume which, continuously for the long space of fifty years, has been more influential than any other work in Britain for sound historical study and teaching and even writing ; and, in pardonable irrelevance be it said, a volume of similar scope, though it may not be equivalent, is urgently called for in the interest of the study of Scottish history, to 'draw out the mind, and extend the area of sound teaching.' Gardiner's *Constitutional Documents of the Puritan Revolution* followed in 1889, also from the Clarendon Press. Prothero's volume was intended as a contribution towards filling up the gap between that of Stubbs and that of Gardiner. It has been highly successful, and is not superseded, even for

Tudor England, by Mr. Tanner's recent and more elaborate work. The Introduction of more than a hundred pages is a solid, business-like, informing piece of historical writing,—thoroughly characteristic of Prothero's habit of mind. It is particularly valuable in its examination of the 'national' and even 'popular' character of the Tudor monarchy, although one may be inclined to distinguish more than he did between means and ends in facing that question and drawing a conclusion. He showed skill and judgment in connecting constitutional issues, and even technical forms and procedure, with issues more broadly and practically political, for it was essential to his view of history that the study of instruments is inseparable from the study of policy. He looked forward to the filling of the gap between Stubbs's volume and his own.

In his Inaugural Address at Edinburgh, Prothero made clear and impressive his interpretation of history and of the function of the historical teacher. The growth of human society he took to be the province of the historian. No doubt, much in the quest is subtle and elusive, but on that very account the inquiry is of high value as a training in good judgment and 'common-sense'—something greater than logic—regarding the conduct of the affairs of men. The very complexity—more than the mere vastness—of the study is a call to judgment and to its cultivation through the exercise, in combination, of the qualities of truthfulness and sympathy or the understanding mind. He who reasons thus from the whence to the whither is neither pessimist nor optimist, but a 'meliorist.'

Industry almost unremitting, love of accuracy, love of justice, just-mindedness—the finest and perfected fruit of historical study: these Prothero had conspicuously. We have written of the historian. But those who knew him personally think also of the man—his straightness, his forgetfulness of self, his ever-ready helpfulness to others.

D. P. HEATLEY.

'PAROCHIN OF SCATSTA' IN SHETLAND. The under-transcribed deed of 1596, which is in the hands of Messrs. Aikman & Thomson, Writers, Glasgow, is of unusual interest. Its terms invite comment from some one acquainted with the locality and its history.

In 1537 an honourable and discreet man named Mons Thomessone, of Scatstadh, purchased a farm which lay in the 'parish and priest's district' of Lunnesting in 'Hietland.'¹ These facts leave no doubt that 'Laxo,' where the ground conveyed was situated, was Laxo [Lax Voe] in Dury Voe, about fifteen miles in a straight line north of Lerwick. The deed is a charter of wadset with blench holding, but the bounds are 'fra the hiest of the hill to the lowest in the eb,' the well-known Norse odal tenure which gave the land within the flood mark to the holder, contrary to English and Scottish practice, under which the ground within flux and reflux of the tide was crown property. The name Enarsone is the Norse Einarsson. Guttorm Einarsson, for instance, was a juror in 1538 at Bergen, attesting as a resident in Shetland a judgment given in Yell that year.² Tyrie was

¹ *Orkney and Shetland Records* (Viking Club), i. 68.

² *Ibid.* i. 70-75.

a local name ; John Tyry was Archdeacon of Orkney in 1527-1560.¹ As for the granter of the deed, he is ‘ Nicoll Enarsone of Hardwall heretour of the lands ’ ; the document is executed ‘ at Hardwell ’ notarially on behalf of Enarsone by Alexander Bruce, who was still practising in his notarial capacity in 1603.²

Economists may explain the precise significance as regards exchange values between the marks and marklands, and the angel nobles and dollars ; there are problems here that a mere interloper finds it safest to vault lightly over. They are, of course, the capital sum for which the wadset, or mortgage, is to be redeemed. The rates of rent—4½ marks at twelve pennies per mark, and 3½ marks at nine pennies per mark—were, according to circumstances and security, the customary agreement. Twelve pennies per mark of land was the normal rate,³ but the lower rate of nine pennies was not uncommon. See, for example, in 1575 a wadset of ‘ sewin mark land with halff mark, ix the mark.’⁴

GEO. NEILSON.

Be It Kend Till all men Be this present chartour Me Nicoll Enarsone of Hardwall heretour of the landis underwritin To haif sauld annalert disponit wadset and away put Lyik as be the tennour hereof sellis annalers disponis wadsettis & away puttis fra me myairis assignars & eftercumers to Alex^r Isbuster my sone in Law his airis assignars & eftercumers All & haill my four merkland and ane half Inde ane merk xii d ye merk and thrie merk half merk land ix d ye merk Liand in the toun of Laxo parochin of Scatsta maynland & shirefdome of zetland And that for the sowme of sewintene angell noblis gold in wecht and twa auld siluer dolouris pait and deliuerit to me at the making of thir presentis Off the quhilk sowme I haldis me weill contentit satisfet and pait And thairof exoneris quitclaimis & dischargis the said Alex^r Isbuster hisairis assignais & eftercumeris quhatsumeuer foreuer Prowyding alwys at quhat tyme soevir I the said Nicoll or my foirsaidis lauchfull airis gottin of my body repayis and delyueris to the said Alex^r or his foirsaidis free of our awin leill won geir unborrowit at the handis of ony man altogether in ane sowme upon ane day betwix the sun rysing & doun passing of that ilk the foirsaid sowme of sewintene angellis gold in wecht & twa auld siluer dolouris Together with ane letter of tak & assedatioun of the saidis landis for the space of ellewin zearis efter the redemptioun yairof to be maid to the said Alex^r & his foirsaidis frie but payment of ony maner of dewtie yairfoir during the saidis zearis Than & in that case the said Alex^r & his foirsaidis Sall renunce & ower gif all ry^t title entres bay^t & possessioun quhilkis they had hes or ony wys may clame or haif In and to the foirnamed landis together with all charters & Instrumentis of sesing quhilk they haif of the samen landis to be vsit be me & my foirsaidis as our proper evidentis except the said letter of tak & assedatioun to be maid & gifin in maner foirsaid To be haulden and to be had all & haill the foirsaidis four merkis and ane half landis liand as said is with housis bigingis yairdis toftis croftis partis pendicles & pertinentis pertening thairto quhatsumeuer To the said Alex^r & his foirsaidis of me and my

¹ *Ibid.* i. 108, 131.

² *Ibid.* i. 226.

⁴ *Ibid.* i. 84.

³ *Ibid.* i. 85.

foirsaidis In free blensche for payment of ane penny zeirlie vpon the ground of the saidis landis gif it be requirit for all vther maner of Dewtie or service that may be askit thairfoir As the samen lyis in lenth & breid with muris mossis inpastour outpastour frie Ische & entrie fra the hiest of the hill to the lowest in the eb with all & sundrie vther commodities friedomes easements and richtuous pertinentis quhatsumeuer pertening thairto but ony kynd of stope trubill or again calling quhatsumeuer And I forsuith the said Nicoll my airis & assignais foirsaidis fra all evictionis perellis dangeris & Inconueniences quhatsumeuer present bygane or tocum sall warrand acquiet & defend the foirnamed landis to the said Alex^r & his foirsaidis agains all deidlie as law will Attoure to my Lovittis David Diksone in Scatistay

barlyeis in yat pairt speciallie constitut I charge zow or ony of zow That incontinent efter the sicht heirop ze pas to the ground of the landis abonewrittin and yair in my name gif state seasing reall actuall & corporall possession to the said Alex^r & his foirsaidis or yair pro^{rs} & actornayis in yair names beraris heirop be delyuering to thame stane & mwld of the samen landis as use is in sic caisses And this onnawyss ze leiff vndone The quhilk to do I commit to zow my full powar & commissioun In Witnes of the quhilk writtin be Alex^r Bruce notar publict I haif causit him subscribe the same in my name quhairunto my seale is appendit & markis added At Hardwell the twentie fyve day of August the zeir of God Jaj v^c four scoir sextene gearis Befoir thir witnessis Andro Hawik of Scatistaye Jon G servitor to W^m Tyrie of Bus Sanders Mowat & Jon Linletter with nyeris diverss.

Nicoll Enarsonne with my hand
at the pen led be Alex^r Bruce
notar publict at my comand
becaus I can not write.

Ita est Alex^r Bruce notarius publicus
De speciali mandato dicti Nicolai
scribere nescientis ut asserint ac
testis in premissis rogatus et
requisitus.

A. Hawik Witnes

[Notarial Mark]

[ENDORSEMENT]

Apud Laxo xxvij Octobus 1596

The Quhilk day compeirit David Diksone in Scatistay bailye in that part within writtin speciallie constitute Quha past vpon the ground of the four merk half merklandis within specifeit liand as is within contenit And be vertew of the precept powar & office of bailzerie within writtin to him committit gaif state & seasing reall actuall & corporall possession off All and haill the saidis four merk & ane half landis with the pertinentis to Alex^r Isbuster and his airis withinwrittin be delyvering to him mwld & stane vpon the ground of the samen landis as vse is vnder reversioun contenand the particular sowmes of money within mentionat Vpon the quhilkis all & sundrie the said Alex^r askit Instrumentis of me notar publict vnderwrittin Thir things wer done vpon ye ground of the samen landis about twa houris efter none day zeir & place foirsaidis Befoir thir witnessis

Lowrence Antonesone in Griben Magnus Gregoressone & Lowrence Magnussonne in Laxo with nyeris diverss.

Ita est Alex^r Bruce notarius publicus In premissis specialiter requisitus ac testis manu mea testan meis signo et subscriptione manuali.

[Notarial mark]

Charta et preceptum sasine Alexandri
Isbuster · 1596

A SURVEY OF ROXBURGH CASTLE. My colleague, Mr. Charles Johnson of the Public Record Office, kindly drew my attention to the subjoined writ and return, which appear to have escaped the notice of the late Mr. Joseph Bain.

By the terms of the writ, dated 10th December, 4 Henry V. (1416), John Clavering, knight, and Robert Harbotell, esquire, are appointed commissioners to examine into and report upon the adequacy of the armaments and the state of repair of the castle of Roxburgh, which the English still held. The undated return, sent in by them in compliance with their instructions, describes fully the weak and unsatisfactory condition of the castle, and gives a detailed account of loophole and wall and battlement.

I have transcribed the return, whose Latinity is manifestly imperfect, *litteratim*, but have pointed out two errors because they may obscure the meaning.

The reference to the writ and return is *Chancery Miscellanea*, Bundle 2, File 49, Number 20.

WRIT

Henricus dei gracia rex Anglie et Francie et dominus Hibernie dilectis sibi Johanni Claveryng, chivaler, et Roberto Harbotell, armigero, salutem. Ex parte Johannis de Etton, chivaler, et Johannis Bartrame, chivaler, quibus nuper commisimus custodiam castri nostri de Rokesburgh' quod in marchiis et fronteris Scocie situatum existit, nobis est ostensum quod, cum ipsi non habeant sufficientes artillarias sive stuffuras aut alia necessaria infra idem castrum pro municione et salva cus[todi]a castri predicti, idemque castrum in domibus et muris adeo ruinosum confractum et dirutum existat, † quod † predicti Johannes Etton' et Johannes Bartrame seu soldarii aut servientes nostri eiusdem castri ibidem diu morari non audent, nisi pro reparacione castri predicti ac pro sufficientibus artillariis et stuffuris huiusmodi per nos celerius provideatur. Nos indempnitati nostre in hac parte prospicere volentes, ut teneamur, ac super premissis per vos plenius cerciorari, assignavimus vos coniunctim et divisim ad supervidendum que et cuiusmodi artillarie sive stuffure nostre sive alia necessaria infra idem castrum pro municione et salva custodia eiusdem existunt, et si castrum predictum, ut premittitur, ruinosum existat. Et ideo vobis mandamus quod circa premissa diligenter intendatis et ea faciatis et supervideatis in forma predicta, nos de toto facto in hac parte citra quindenam Pasche proximo futuri in cancellariam nostram sub sigillis vestris vel unius vestrum distincte et aperte certificantes, remittentes nobis hoc breve. Damus autem

custodibus, soldariis ac aliis officiariis nostris castri predicti et omnibus aliis, quorum interest, tenore presencium firmiter in mandatis quod vobis in execucione premissorum intendentes sint, consulentes et auxiliantes, prout decet. In cuius rei testimonium has litteras nostras fieri fecimus patentes. Teste me ipso apud Westmonasterium x. die Decembris anno regni nostri quarto.

[Endorsed] Responsio Johannis Claveryng', chyvaler, et Roberti Harbotell', armigeri, virtute brevis domini regis sub magno sigillo domini regis eisdem Johanni et Roberto directi, prout patet per quandam cedulam huic brevi consutam.

RETURN

In primis ad introitum Porte occidentalis defecit unum Turnepyke de lingno. Item apud Billopis toure defecit le Bretesyng' cuiusdam muris ibidem quam oportet emendare. Item oportet dictum castrum habere duas portas fereas, videlicet unam ad introitum dicti castri et alteram apud le Doungyon' vocatum Douglase toure. Item le Mantellyng' et Bretesyng' dicti turreis oportet emendare quia sufflatur per ventum usque ad cooportorium. Item oportet emendare unum Turrem super Tevyottesyde. Item oportet facere unam novam parietem a Douglase toure usque Tevyotte. Item fundamentum parietis a Douglase toure usque portam orientalem et le Batalyng' dicti turreis est in puncto ad cadendum nisi celarius emendetur. Item fundamentum de Stokhouse toure est totaliter dirumptum et in puncto ad cadendum. Item sunt duo posterynes super Tevyottesyde que oportet habere duos posterynes de ferro. Item fundamentum de la Rounde toure versus Tevyotsyde est totaliter dirumptum et super dictum Turrem defecit le Batalyng', ita quod soldarii non poterunt se ipsos et dictum castrum defendere nisi celarius emendentur. Item paries a dicta Turre usque le Stannegarret est ruinosus in foraminis et in puncto ad cadendum nisi celarius emendetur. Item oportet habere unam novam parietem a Westposteryne usque Tevyotsyde pro salvo custodia dicti castri. Item fundamentum de la Posteryne toure est totaliter dirumptum, et oportet emendari et oportet habere apud dictum Posteryne unum novum Butreys. Item fundamentum Turreis apud Westheved est totaliter dirumptum et in puncto ad cadendum. Item oportet habere unam novam Turrem apud Brounestabile, quia ibidem est locus periculosus, quia unus homo potest ibidem scandere et intrare sine scala. Item le Nevyl' toure est ruinosum et modo dirumptum et fractum pro defectu cooportorii, et le Bretesyng' dicti Turreis defecit. Item fundamentum longi parietis est dirumptum in foraminis et oportet emendari. Item le Drawell', quod Robertus Umframvyll, chivaler, de novo fecit, est totaliter dirumptum pro defectu meremii, quia meremium dicti fontis est totaliter modo corruptum. Item est ibidem in dicto castro una alla¹ de viij copullis sine muris tectura et tignis, et modo meremium dicte aule est totaliter corruptum. Et quod non sunt ibidem nulle artolarie sive stuffure victualie nec alie necessarie pro munitione et salva custodia dicti castri. Et quod soldarii nec servientes domini regis ibidem diu morari non audiant²

¹ For aula.

² For audeant.

nisi celarius emendentur. Et quod omnino oportet habere infra dictum castrum unum molendinum pro bladis ibidem molendis. Et predicti Johannes et Robertus dicunt quod sunt ibidem multi alii defectus in dicto castro que festinanter emendari oportent pro municione et salva custodia dicti castri.

It is clear from the following entry in Issue Roll,¹ Michaelmas, 5 Henry V., under the date Monday, 27th December, 1417, that, probably as an immediate and direct result of this return, artillery was sent from the Tower of London and elsewhere to strengthen the defences of the castle.

‘Johanni Etton’ et Johanni Bertram, militibus, custodibus castri regis de Rokesburgh’ in denariis eis liberatis per manus predicti Johannis Bertram, recipientis denarios de Roberto Welton’ super cariagio diversorum estuffamentorum et artillariarum per ipsum Johannem infra Turrim Londoniarum et alibi de stauro et providencia regis receptorum, videlicet de civitate Londoniarum usque castrum predictum pro fortificatione et municione eiusdem—xxvj. li. xiiij. s. iiij. d. unde respondebunt.’

That the castle was surveyed, the report sent in, the artillery despatched, and an account of the money paid for its carriage enrolled in the cycle of one year is at once a tribute to the activity of Henry V.’s government and an addition to the numerous indications of the importance which they attached to the retention of this famous stronghold.

For other entries relating to Roxburgh Castle (which are not infrequent for this period) the fourth volume of the *Calendar of Documents relating to Scotland* must be consulted. Additional material for this date is also to be found in the second volume of the *Rotuli Scotiæ*, published in 1819 by the Record Commission.

W. R. CUNNINGHAM.

THE ABSOLUTION OF ROBERT BRUCE (S.H.R. xix. 325). The *lapsus calami* which Prof. Lawlor detects in the Trinity College document conveying the Church’s absolution to King Robert the Bruce seems to be open to a simple solution. The writer had two numbers in his mind (1) the numerical title of Pope Clement, and (2) the year of Clement’s Pontificate in which the document was penned. These numbers were ‘five’ and ‘three.’ ‘Five’ should have been placed after Clement’s name. and ‘three’ (tertio) after *anno*. Instead of this the writer by inadvertence transposes them, so that we have *Clementis iii anno quinto* in place of *Clementis v anno tertio*. If this supposition be correct, the *annus tertius* gives us the year 1308 as the date of the document, and this date harmonises with the period when, according to Eubel, Berengarius was Cardinal priest of SS. Nereus and Achilleus. The difficulty, which Prof. Lawlor’s date 1310 raises, thus passes away. At that time, too, Wischard was in confinement in England.

JOHN WARRICK.

Cumnock.

Mr. Warrick’s theory is consistent with the known facts; but I prefer my own. (1) The scribe has made several mistakes of much the same kind

¹ Cf. *Calendar of Documents relating to Scotland*, Vol. iv., No. 880.

84 George Wishart, the Panegyrist of Montrose

as I suggest he made in the date. If his exemplar had Clementis u (which is very probable) u would be almost impossible to distinguish from 11, and the commonest of all mistakes in dates is the insertion or omission of a stroke. There may be instances of transposition of year and tabular number; but I do not remember to have noticed one. It is the more unlikely here, because the year is written in full, 'quinto.' (2) I think I have shown that 1310 presents no 'difficulty.' The *apparent* difficulty is due to Eubel's careless way of stating the facts.

H. J. LAWLOR.

Trinity College, Dublin.

GEORGE WISHART, THE PANEGYRIST OF MONTROSE.

According to Hew Scott, Wishart was admitted minister of the second charge of St. Andrews before the 18th of April, 1626, and fled to England in 1637 (*Fasti*, ii. 394). Baillie, in his account of the Glasgow General Assembly of 1638, states that, on the 4th of December, 'the toun of St. Andrewes complained that their minister, Dr. Wishart, had deserted them above eight moneths: they seemed content enough with the man's life and doctrine, if he would returne, and acknowledge the Assemblie' (Laing's *Baillie's Letters*, i. 151). Murdoch and Simpson say that 'Wishart's last service in Monifieth was on April 3rd, 1626, and on April 10th he took up his duties in the Town Church of St. Andrews as colleague to Alexander Gladstones' (*Memoirs of Montrose*, 1893, p. xi). In 1626 the 3rd and 10th of April were Mondays. A writ in the municipal archives of St. Andrews shows that, on the 12th of April, 1626, the town council ordered the treasurer to pay £40 as the rent of a house in the Northgait, which the magistrates had taken for Wishart from Whitsunday 1626 to Whitsunday 1627; and that the council instructed the magistrates to arrange for the transportation of Wishart and his family to St. Andrews, and to cause the treasurer to pay the expenses. Before he had been two years in his new charge he was made a burges of the city and a gild-brother.

6 March 1628. 'The quhilk day, the said Dean of Gild [Thomas Robertson], with consent of his assessoris present for the tyme, receavit and admittit ane venerabill man, Maister George Wishart, minister of Chrystis evangell at the said citie of Sanctandrois—alreddie receavit burges and citiner of the said citie be the magistratis thairof—to the libertie, friedome and prevelege of the gildrie of the said citie as ane gild-brother thairof in all tyme cumming, for payment of the sowme of fourtie pundis money to the gild box, according to the lovabill actis of the gildrie of the said citie; lykas the said Mr. George gave his aith of fidelitie as use is, and thairupoun he requyrit act of court' (*St. Andrews Guildry Book*, 1604-1746).

The town-council minutes only go back to 1656.

D. HAY FLEMING.

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The Regalia of Scotland, 1651-1660

THE collection of MSS. formed by the late Dr. David Laing was bequeathed by him to the University Library of Edinburgh. A portion of them was edited by the Rev. Henry Paton for the Historical Manuscripts Commission and published in 1914. The scope of the valuable work of the Historical MSS. Commission in this as in other matters is necessarily limited. It could but describe and calendar the MSS., but it could not enter into the numerous historical questions raised by documents or groups of documents. An example of this will be found in the Laing Report, which gives in pages 277-292 a most valuable print *in extenso* of a series of Letters and Papers relating to a thorny and controversial episode in Scottish History, the preservation of the Regalia 1651-1660 and the subsequent disputes as to the credit for their safety. The editor could refer only in the most summary way to this packet of documents, which I examined at Edinburgh last summer. I then found that these documents throw a good deal of light on this obscure matter and supplement to a marked extent our previous sources of information.

As the problem is not very familiar, it may be well to begin by restating the facts in the broadest outline.

The so-called 'Honours' or Regalia of Scotland were in 1651 committed by the Earl Marischal to his own castle, Dunnottar, for safe custody, and George Ogilvie of Barras was placed in command. The castle was besieged by the English Parliamentary troops. When it ultimately surrendered in May 1652, the

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English general found to his chagrin that the Regalia were no longer there. They had been conveyed out of the castle by Mrs. Christian Granger, wife of Mr. James Granger, minister of Kinneff Parish Church and buried by him in the Church. In 1660 they were dug up and restored to the King. The problem was : Who had the credit or the main credit for the preservation of the Regalia ? Was it George Ogilvie and his wife ? or was it James Granger and his wife ? or was it the Earl Marischal and his mother the Dowager Countess and her second son, John Keith, later first Earl of Kintore ? All claimed credit and all got rewards in varying degrees : but the echoes of mutual recrimination went on until well into the eighteenth century. Since the contemporary controversies at least three distinct attempts have been made to review the position and get at some idea of the facts.

In 1829 the Bannatyne Club published a volume, *Papers relative to the Regalia of Scotland*. It is a valuable and interesting work, giving a good description of the Regalia themselves. It is compiled largely from the standpoint of the Ogilvies and is certainly very incomplete.

In 1896 the Scottish History Society published *Papers relative to the Preservation of the Honours of Scotland in Dunnottar Castle, 1651-52*, edited by Charles R. A. Howden. Mr. Howden, recognising that the Bannatyne Club had given mainly the Ogilvie side, was at pains to represent rather the side of the Keiths, *i.e.* of the Earl Marischal, his mother and his brother.

In 1910 the Rev. D. G. Barron published his volume *In Defence of the Regalia*, being selections from the family papers of the Ogilvies of Barras. This is much the most complete statement of the case and it is written on the whole in an unbiassed way.

Not one of these writers, however, has been able to give the complete story, because they have had little or no access to documents throwing light on the Grangers' case. It is this aspect of the question, which emerges most from the Laing papers, which fortunately are mainly originals, not mere copies.

I believe that the most satisfactory treatment of a problem such as this is to assemble *all* the available documents, arrange them in strict chronological order and then see what inferences can be drawn.

The Keiths performed two services early in the story. The Dowager Countess, having received from her son the Earl

Marischal the key of the secret hiding place of the Regalia in Dunnottar, went to Dunnottar just before the castle was besieged, revealed their place to George Ogilvie and his wife and placed them in their charge.

John Keith left the castle, probably in December 1651 and escaped to the Continent. In order to throw the English off the right scent, he gave out that he had removed the Regalia and conveyed them to King Charles in France. He stuck to this story even after the surrender of the castle, and it was as a result of this that Ogilvie and his wife were ultimately released by the Parliamentarians.

Those two acts appear to be the beginning and end of the Keith family's contribution towards the preservation of the Regalia.¹ We now come to the documents.

29 March 1652. Letter from George Ogilvie of Barras to the Countess Marischal.

Contains a reference to John Keith, who was believed by the English to have removed the Regalia: but no direct mention of them.

S. H. S., pp. 119-121.

This suggests that there was an understanding between George Ogilvie and the Countess Marischal as to John Keith's part in the matter.

31 March 1652. Mr. James Granger to Countess Marischall. Receipt for the Honours beginning:

I, Mr. James Granger, minister at Kinneff, grant me to have in my custody the Honours of the Kingdom, viz. the Crown, Sceptre and Sword, etc.

Bannatyne Club (1829) p. 40.

The Countess Marischal then begins, just before the actual Restoration of King Charles II., her attempt to 'handle' the

¹ Debrett, in his account of this episode in his *Peerage* under 'Kintore,' says: 'Sir John Keith had these insignia of royalty safely conveyed from Dunnottar Castle and deposited underground in the Church of Kinneff.' There is no suggestion in any contemporary document that Keith either planned or negotiated the removal of the Regalia by Mrs. Granger; that was not even claimed by the Countess, who would assuredly have claimed it, if she had been able. Moreover, it is practically certain that Keith left Dunnottar in December 1651, and that the Regalia were not removed until March 1652.

Grangers, so as to get hold of the Regalia and secure for her family any credit that could be secured.

15 May 1660. Countess Marischal to Mr. James Granger.

'Since it hath pleased the Lord to restore our King to his just right and crowne . . . I am resolved to remove the honours which are in your custody . . . whenever his Majestie shall send me his order for disposing of them, both you and Barras shall not want that praise and commendatione quhich your loyaltie and his both deserves. . . . Though I have been very plain with Barras in my intentions, yet I have not let him know I would remove them so soon.'

Laing MSS. pp. 277, 278.

She admits that she has not taken 'Barras' fully into her confidence.

18 May 1660. Same to same.

'I am now so deeply ingaged in the busines . . . that I must crave you pardon to tell you I have send him to bring them away thought even aganst your will (but you may be confident it shall not be aganst your weall).'

Laing MSS. p. 278.

She actually sends a messenger to take the Honours away.

23 May 1660. Countess Marischal to King Charles II.

'As for the saftie of the honours I have left nothing which wes in my power to doe for the same . . . or preserved to your Majestie and your posteritie. . . . The way of securing of them were too tedious for a letter. Only the gentlman quho commanded the Castle of Dounotter discharged his duety verie honestlie in putting them in the hands of a person who did show himself worthie of so great a trust. Seeing it is not necessare the honours should ly any longer in obscurity your Majestie will resolve how to dispose of them.'

S. H. S., pp. 121, 122.

She writes to the King, giving a rather restrained measure of commendation to Ogilvie and Granger.

19 July 1660. Countess Marischall to Mr. James Granger.

'I must evine expostulat with you for your refusing to deliver the honnors . . . now I will deall freely with you, I am resolved to

have them and hath send men ther to search and range your hous for them, who I supos will not returne without them. . . . I doo not this ather from any intention to wrong any body or of advantage to myself, bot that, seeing his Majesty knows all the way of there preservation and belives that afftir my sone John owned them, and gott Mideltons resait, that they ver in my costady, maks mee tak this course.'

Laing MSS. pp. 278, 279.

On Granger refusing to hand them over, she becomes more emphatic and peremptory. Here too is the first indication of her use of the John Keith story.

By this time Ogilvie was beginning to get anxious, lest he should be forestalled by the Countess, and he had apparently written to Granger, asking that the Honours should be given to him.

21 July 1660. Mr. Granger to George Ogilvie of Barras.

'I had secured the things yee know of upon the night time & am persuaded though ane armie should come they could not be the better. . . . As for my selfe my neck shall break and my life go for it before I faill to yow, yet some litill difficultie makes me loth they should be transported as yet.'

Barron, p. 150.

Granger shows his disinclination to give them up to either.

23 July 1660. Countess Marischal to Mr. Granger.

'I could not have expected such expressions from Barras as I hear he had both of you and me . . . I promise you I shall not hereafter desire them out of your custodie till the King's pleasure be knowen . . . I may say I never lessened either Barras as your parts, but in the first place expressed them, as he knows himselff.'

Laing MSS., p. 279.

The Countess tries to set Ogilvie and Granger at logger-heads: and fearing that she has gone too far, does not press Granger further just then.

1 August 1660. Countess Marischall to Mr. Granger.

'I resaved your last, wherein you give mee a werey particular relation of Baros desyres to you that day afftir Gibbie left you . . . I newer conceaved any prejudis to mee by your keiping of them till his Majesties plesour be known, nor yet was my desyr to

have them from any advantage I could have in having them heer besyd mee, bot as I shew you before, I belive the King thought that they wer in my costadie, and in being so I think it was but reason, all being considered. . . . As for your part I am satisfyed becaus you did ingenuously sho mee how you was surprysed and even insnared, first in removing the honnors, quhich hee never told me, though desyred be you, and last, in making you to give ane oath to him, who had no pouer to tak it, and all the tym keiping ane underhand way with mee. . . . And seeing Bares had agane appoynted to be at your hous on Fryday last, I desyr by this berrer to kno what his desyrs wer, and what past betuixt you and him !'

Laing MSS., pp. 279, 280.

This letter seems to show that Ogilvie had persuaded Granger to swear not to surrender the Honours to any one but himself. The Countess is evidently anxious as to Ogilvie's dealings with Granger.

4 September 1660. King Charles II. to Countess Marischall.

'I am so sensible of the good service done to me in preserving my Crown, Scepter and Sword that . . . I have put marks upon your Sons. . . . I do desire that the Honours may be delivered to my Lord Marishal, that as he received them, so they may be delivered by him to the ensuing Parliament !'

Barron, p. 196.

The King directs the Countess to deliver the Honours to her son, the Earl Marischal, presumably to test whether she had really got them at her disposal. Meanwhile Ogilvie had quite prudently sent his son William to London to look after his interests at court.

15 September 1660. William Ogilvie (from London) to his father George Ogilvie.

'I am confident that the business about the honoures . . . shall goe very vell on, gif ye but keepe them undelyvered till any till ane new order come to you. . . . Give it vere your pleasure to come this length yourself it vold be vell vorth your paines. . . . So keepe them till I acquaint you upon any condition. And give my Lord Marschall hes surprysed you with the King's order befor my letter came to your hands, ye most either come or wryt to the King that ye had them and hes suffred

for them, ye and your viffe, and preserved them till this tyme, that ye have obeyed his Magisties order. And give ye have gotten ane receit on them ye most send it to me that I may shew it. . . . I assure you your name vas never heard of in the businesse till I cam.'

S. H. S., pp. 123-125.

28th September 1660.

Act of the Parliament of Scotland, rescinding previous orders and leaving 'the said honors to be called for and disposed of by the said Earle, according to the trust and order of Parliament.'

Bannatyne Club, LXXIV, LXXV.

28 September 1660. Obligement Mr. Granger to George Ogilvie.

'Whairas I have receaved ane discharge from George Ogilwie of Barras of the honors of this kingdome and he hath gotten no more but the scepter Therefore I obleidge that the rest viz. the croune and suord shall be furthcoming at demand,' etc.

Barron, p. 151.

By this time Ogilvie, anxious to have some part of the Regalia in his own possession and unable to persuade Granger to part with them all, secured the Sceptre only.

28 September 1660. William Ogilvy to the King.

He declares that his father 'hath had an still preserves yo^r Crowne Scepter and Sword of Scotland in his Custody' and asks for his Majesty's order in relation to the Honours.

His Maj^{tie} ordaines the Petitioners father to deliver his Crowne Septer & Sword to the Earle Marishall of Scotland & to get his receipt of them

LAUDERDAILL.

Barron, p. 155.

William Ogilvie, still in London, petitions the King for instructions.

He gets instructions that his father should hand them over to the Earl Marischal.

2 October 1660. Countess Marischall to Mr. Granger.

'I hope now all parties will be satisfyed that my sone Marischall hath brought me a letter from his Majestie that the croun etc. may be delyverit to him . . . being confident that yow will delyver

the croun, scepter and sword to any that my sone shall desire yow to give them unto.'

Laing MSS., p. 280.

The Countess, having now secured an actual order from the King, resumes her pressure upon Granger, in which of course her son the Earl Marischal co-operates.

3 October 1660. William, Earl Marischall to Mr. Granger.

'Knowing that the crowne and honours of this kingdome ar yet continued in your custodie . . . I doe heireby desire yow to delyver the said croun, scepter and sword . . . to Robert Keith of Whytriggs, who hes the charge of my house of Donnotter. . . . I shall be verie willing in concurring that speciall notice shalbe takene of your good service in the care and preservatione of them.'

Laing MSS., pp. 280, 281.

6 October 1660. Same to Same.

'These are desireing yow that ye would meet me at Dunnottar upon Munday the eight of this instant . . . that I may receave the honours, . . . quhair Barras hes promised to meit, where I may give you both your due thanks.'

Laing MSS., p. 281.

This produced a curious situation. Granger had got the Crown and Sword Ogilvie had got the Sceptre. Their mutual relations were distinctly strained !

October 1660 (about 7th or 8th]. George Ogilvie to Mr. Granger.

'Be plessit to meit at Barras be 10 hours and bring thes things ye haw with yow and I sall dow the lyk and we sall go both to-gidder and wait upon his Lordship and delywer them of our hands to himself.'

Laing MSS., p. 281.

It is difficult to know exactly what then happened. It is clear, however, that both Ogilvie and Granger arrived at the castle and met the Earl in the presence of witnesses. The question arose as to who should get the receipt. Granger was told that he should have one later. But Ogilvie got the following receipt, either then, or as was afterwards alleged, the night before !

8 October 1660. 'Receipt be the E. Mariscall to Geo. Ogilvy of Barras.'

'Att Dunnottar the 8 day of October 1660 I Wm Earll Marischall grants me to have receaved from George Ogilvy of Barras the Crowne Sword and Scepter . . . and descharges the forsaid George Ogilvy of his reseatt theroff.'

Barron, p. 156.

It is not surprising to find the Earl writing to his mother and describing it as 'an ugly and unhandsome business.' I doubt whether he himself knew how ugly and unhandsome had been his mother's share in it.

(Undated : about 8 October, 1660). William, Earl Marischall to Countess Marischall.

'I can nott wreatt to your La all the passages I hav found in receauing the honores . . . I leave to say farder therein bott thatt it hes bein ane Oglye and Onhandsum caried businis.'

Barron, p. 156.

Granger evidently felt that the time had come to place on record his side of the matter. He had not been treated well by the Earl : he distrusted Ogilvie : so he joined forces with the Countess in representing that the real saviour of the Regalia was John Keith.

20 October 1660. 'Mr. James Granger, his declaration anent the Honors.'

'Being informed that George Ogilvie of Barras hath his sonne at London, giving out that his father was the only preserver of the honoures of Scotland . . . and that they were in his custodie ever since, though others have been more instrumentall than he, I thought good therefor to declare the truth : viz. . . . I have keeped them according to her (Countess Marischall's) desire untill this present October 1660, the eight day of which . . . in Dunnottar Castell I delivered them to the Earle Marshall before these witnesses . . . whairupon I required a tickquet of receipt, but was deferred till afterwards. Since which time I am informed that George Ogilvie hath obtained from the Earle of Marshall a receipt and hath sent ather it or the double of it to London to be produced by his sonne, as if the honoures had been in his custodie and by him preserved, although it be weell knowne to his sonne that I had them in my house and keeping ever

since the first deliverie of them to me. But indeed the prime mean of their safetie was the declaring of them to be caried off the kingdome by the Earle Marshall his brother John.'

S. H. S., pp. 125, 126.

Then the Keiths issued their manifesto.

8 November 1660. 'Barress Alledgances ansred.'

A document prepared in the interests of the Keiths, traversing *seriatim* George Ogilvie's claims.

S. H. S., pp. 126-131.

12 November 1660. Mr. Granger to Countess Marischall.

Relates how Ogilvie and his son were pressing their claims in London and how Ogilvie had told him that 'he would show a tickquet of receipt subscribed be my Lord Marshall that he had receaved the honoures from him. I enquired where had he that, and quhen had he gotten it, seeing I had delyvered them, and he refused to give me a tickquet of receipt. O, said he, I got it the night before the honoures were delyvered be my Lord Arbuthnot . . . truely I thought it very strange. Now I did not refuse to concurre with him till I had hard all, and then I told him I would not be deceived any more with him.'

S. H. S., pp. 131, 132.

The next document shows that the Countess had made good her case in the eyes of the Earl of Middleton and that the Earl Marischal was supporting Ogilvie.

15 November 1660. Earl of Middleton to Countess Marischal.

'I am both sorry and ashamed that so litle a person as Mr. Ogilvie should have put your Ladiship to so much trouble, and I am struck with Amazement to think that my Lord Marischal should in the least countenance him: I shall not be wanting to put a stop to his Pretentions.'

Barron, p. 199.

Next we get the rewards.

1660. Patent of Knight Marischal to John Keith.

Refers to 'the great service he performed in the enteir pre-serveing of his Majesties Royal Honours . . . a service never to be forgotten by succeeding generations.'

S. H. S., p. 133.

11 January 1661. Act of Parliament in favour of Mrs. Granger.

Granting her 2000 Marks Scots, because she 'wes most active in conveying the royall honnours out of the castle of Dunnotter . . . and that be her care the same was hid and preserved.'

Laing MSS., p. 282.

5 March 1661. Patent of Baronetcy conferred on George Ogilvie. Refers to his services thus :

'utpote qui auxiliarius fuit in conservatione nostre Regie Corone Sceptri et gladii antiquorum Insignium et monumentorum hujus Regni nostri.'

Barron, pp. 158, 159.

It is true that Mrs. Granger got an Act of Parliament in her favour, but it would appear that she never received more than a fraction of the 2000 Marks voted to her.

The remaining documents, all Laing papers, are rather entertaining, in showing the Countess' spiteful feelings against 'the new Baronet,' who, for his greater services, had received a reward much less than that which her machinations had secured for her second son.

5 April 1661. Countess Marischall to Mr. Granger.

'I knew nothing of Barras's return till I read your letter. Or I came home it was reported he was knight baronet, which is no great business. . . . Let me intreat you neither to believe nor be moved for any speeches of Barras's. In a short time he will perhaps forget his ranting discourse, I assure you too many of them bosts. I shew how he circumvened and abused both you and me, and I believe no honest people will think the better of, for all his knighthood.'

Laing MSS., pp. 282, 283.

26 August 1661. Same to same.

'The bearer will tell you how high the new knyght hath carryed. . . . He is very bussie in giving informatione for to verify himself. . . . It's a wonder how he hath the impudence to say that my Lord Marischall did intrust the honour to him and so how could he but deliver them to him.'

Laing MSS., p. 283.

11 October 1661. Same to Same.

'That gentillman sores werry high, as I hear, bot may be hee light low. . . . I hope you and I shall live to see those who have miscaryd to us sencible of their fault.'

Laing MSS., p. 283.

16 October 1661. Same to same.

'I belive nather you nor I aims at anything but to cleer trouth, and discover that man's untrouths. I admire his impudens in saying I had given you that money. I cannot belive that Georg Straton wald asert any such thing as that hee delyverd or numbered 500 merks quhich you resaved, it being so gros an untrouth. . . . As for Baras going to duell in Edinburgh I hope hee will live ther lyk a baronett.'

Laing MSS., p. 284.

28 October 1661. Same to same.

'I heir send you my thoughts of the papar you send mee, quhois substans is the same with yours, only I conceive this to be the best way in ansuring his untrouths particularly; but you may mend what you find amis or not weall vordit, and when you think it right, you will writt it over yourself and sett your name to it, and send a double to mee, with thesse letters of myne and Barres. . . . Who knows but it may pleas God yet that we mak that deseetfull mans doings knowin to his Majestie, but it must be weall tymed, and keepd werry secreit, quhich I doubt not you will doo.'

Laing MSS., p. 284.

Is it possible now, two hundred and fifty years afterwards, with the help of the Laing MSS. to reach any position approaching finality as to the merits of the case? I think it is.

All three parties were distinctly contributory to the safety of the Honours and all deserved commendation and reward. It can scarcely be doubted that the Grangers rank first. Mrs. Granger preserved the Honours by removing them with amazing courage and ingenuity: while her husband concealed them and kept them hidden for eight years. He was not a strong man, in body or in character, but he did his duty and he got little reward. Both the Ogilvies and the Keiths tried to deprive him of credit.

The Ogilvies come next. The Laird of Barras defended the castle gallantly. His wife was hurried into an untimely grave

by the hardships and anxieties of the siege. Ogilvie must have known where the Honours were, but he kept the secret faithfully until the time came to reveal it. He certainly did bully Granger somewhat, but it was mainly in defence of his own rights against the Keiths.

The Keiths come last. Their contribution has been already defined. They were rewarded and rightly rewarded, because they were true hearted servants of the King, and it is only a pity that they did not behave more charitably towards their fellow-servants of His Majesty.

WALTER SETON.

General Council and Convention of Estates

IN an article contributed to this *Review* in 1921 (*S.H.R.* xviii. 157) attention was drawn to the fact that in Scotland, from the fourteenth to the seventeenth century, the estates of the realm met in two forms of assembly, (1) 'parliament' and (2) 'general council,' succeeded by 'convention.' It appeared that 'parliament' was called on a notice of at least forty days: that it had an exclusive judicial competence connected with the formalities of summons; and that it was the supreme court and most authoritative council. On the other hand, there was this lesser council of the estates, with limited judicial powers, called on shorter notice and in some different fashion.¹ Historians have paid far too scant a regard to this complicated matter, and have passed over the difficulty with but little attempt at solution, or even recognition.

A great amount of work remains to be done; and no single explorer can hope, for the present, to achieve more than a mere indication of some outstanding problems. Of these the most insistent is the character of the summons and its relation to the personnel and competence of the assemblies. It would be unprofitable, in the state of our knowledge, to begin where the term 'parliament' first appears, towards the close of the thirteenth century, because it is not till the latter half of the fifteenth that we have much useful aid from documents extraneous to the meagre parliamentary records. It is better policy to investigate, first of all, the later period from about the time of James III. to the Revolution, and then return to the more obscure antecedents.

The present paper must be confined to three special objects: (1) to show that 'general council of estates' and 'convention of estates' are successive names for one persistent, though not entirely unmodified, form of assembly: (2) to adduce evidence regarding the character of the summons to that meeting, and its variations: (3) to indicate briefly, for purposes of contrast, the

¹ *Sc. Hist. Rev.* xviii. 157.

parallel history of summons to 'parliament.' It need hardly be added that the inquiry is tentative, and necessarily incomplete.

CONTINUITY OF 'GENERAL COUNCIL' AND 'CONVENTION.'

Our authentic registers of Parliament begin in 1466. Consequently we have no means of ascertaining whether minutes of 'general council' prior to that date, printed in the folio *Acts of Parliament*, were originally recorded among parliamentary proceedings or in a distinct register. From 1466, however, we are on firmer ground. For more than two centuries, until we come to the Revolution 'Convention,' no minutes of 'general council' or 'convention' ever appear in the record strictly reserved for 'parliament.' In the period between Flodden and 1545 these minutes are in the *Acta Dominorum Concilii*: after 1545 they occur in the *Register of Privy Council*, which opens in that year; and they continue to do so under Charles I., with the exception of proceedings of 'convention' in 1598-9. The very important 'convention' of 1643, which marks an epoch in the history of the matter, and the post-Restoration 'conventions' are minuted in an independent form. A separate volume, in which the 1598-9 minutes are prefixed, contains the proceedings of 'convention' in 1643, 1665, 1667, and 1678. We cannot tell in what condition Thomas Thomson found the minutes which are thus bound together; but it is certain that they were not part either of 'privy council' or 'parliament' register.

Finding no proceedings of 'general council' in the authentic 'parliament' register after 1466, Thomas Thomson did not print minutes of 'general council' in the *Acts of Parliament* till he came to 1545 and the *Register of Privy Council*. He then adopted the plan of introducing 'convention' matter from that register—'convention' was now the technical name—in the form of appendix to the 'parliament' matter. The practice, though useful when there seemed little prospect that the *Register of Privy Council* would appear in print, tended to give the reader a somewhat false impression. This impression was unconsciously deepened by the editors of the *Register of Privy Council*, who habitually referred to the already printed *Acts of Parliament* for the full text. It is easy to be wise after the event. Total omission of 'general council' or 'convention' matter from 1466 onwards in presenting the *Acts of Parliament* would appear to be, on a fresh start, the proper course. One thing Thomson did,

so unwarrantable and confusing that it must be attributed to an oversight. Though he did not profess to include records of 'general council' or 'convention' surviving in the *Acta Dominorum Concilii* up to 1545, he selected one case—the important 'general council' of November, 1513—for insertion in the *Acts of Parliament*, without explaining that it was not on parliamentary register.¹

It is understood, therefore, that 'general council' and 'convention,' with this single exception, have no place, between 1466 and 1545, in Thomson's *Acts of Parliament*. It was during this period that 'general council' gave way to 'convention.' Was the change merely a change of name? Was there any discernible transformation of an institution? Our evidence on the point is practically confined to the *Acta Dominorum Concilii* (unprinted after 1500) and such important scraps of information as are afforded by the *Treasurer's Accounts*. It would be impossible, and it is unnecessary, to compile a full list of 'general councils' and 'conventions.' There are many meetings clearly of that character, but not technically designed. In confining ourselves mainly to assemblies expressly described as one or the other, we must not forget that a considerable number of genuine instances are passed over in silence.

First of all it must be observed that there is a deficiency of record. Information regarding the reign of James III. is notoriously inadequate; and there is more than a suspicion that the bifurcation of 'council' register (into (1) *Register of Privy Council* and (2) the books associated with the Session) began under James IV. or earlier, was arrested by the disaster at Flodden, and was resumed in 1545 after recovery under James V. There is good reason, in fact, to suppose that a register of James IV., recording acts of 'council' in affairs of state, has been lost.

A 'general council' in 1473, to deal with the newly elevated and obnoxious Archbishop, is well known. It was a meeting of importance; and letters went to the four quarters of Scotland.² In 1497 a 'general' or 'great' council, for which letters of summons were issued on October 4, was ordained for October 24.³ A council of over twenty persons on October 28, sitting on a 'barratry' case,⁴ might be taken for the assembly in question, were it not certain that an act was passed directing the 'lords of session' to hear civil causes at the time and place of

¹ *A.P.* ii. 281.

² *T.A.* i. 46.

³ *A.D.C.* ii. 81; *T.A.* i. 362.

⁴ *A.D.C.* *ibid.*

the justice-ayres.² This instance affords the strongest support to the belief that James IV. had another register of 'council,' for it is clear that nothing has dropped out of the *Acta Dominorum Concilii*. In December of 1511, again, we have letters issued for a 'general council' to discuss the important question of Scottish relations with France and the Pope;³ and another was called in the following spring.⁴

Though 'general council' was summoned from time to time under James III. and James IV., we have no record of personnel. An Act of Parliament in 1503-4 leads to the supposition that these meetings were apt to be extensions of the privy council in varying degree, according to the importance of the business, and sometimes to exclude the burgh commissioners from their expected place. 'It is statute and ordanit that the commissaris and hedismen of burrowis be warnyt quhen taxtis or contributionis are gevin to haif thar avis tharintill as ane of the thre estatis of the realme.'⁵ This provision cannot apply to 'parliament,' which it was not necessary to call for supply, and which was rendered public by the manner of summons.

If there was under James IV. a register of 'council' on affairs of state, as well as the surviving register on civil causes, after Flodden *one* register served to record all proceedings. On September 19, 1513, a 'general council' of twenty-three lords provided for the assiduous presence of a small body to undertake public affairs.⁶ No burgh commissioners appeared. But on November 26 we have the 'general council' selected for inclusion in the *Acts of Parliament* by Thomas Thomson, which met to deal with French relations and the regency of Albany. Fifty-two persons 'convenit,' of whom only two represented burghs, the provosts of Aberdeen and Perth. In 1514 there was a 'general council,' at the end of May and the beginning of June, to provide for defence. The important meeting in September, when Margaret was deprived of her tutory after marriage with Angus, was clearly a 'general council,' though not so described. In this matter the burghs were not held to be concerned; but the question of peace with England and the state of the Merse, which necessitated an urgent 'general council' on September 24, 1517, involved the summoning of burgh commissioners.⁷

² *A.D.C.* ii. 137, 211: on 137 read 'act' for 'seit.'

³ *T.A.* iv. 323.

⁴ *Ibid.* 333.

⁵ *A.P.* ii. 252.

⁶ *MS. A.D.C.*: quoted by date.

⁷ *T.A.* v. 149, Sept. 20.

At Stirling, again, on December 16, 1519, the local provost and the provost of Ayr sat.⁸

It is abundantly evident in this period that 'general council' was not a name applied solely to meetings representing the three estates. As has been indicated, we have extensions of the standing or privy council in various degrees. Sometimes burghs are called: at other times they are not summoned. 'Convention' at a later period exhibits the same characteristics, until increasing publicity draws it away from 'privy council' and brings it nearer to 'parliament.' For instance, on March 6 and 10, 1524-5, there is a gathering which we might describe as 'privy council afforded.' The clerk evidently so conceives it; for he names the privy councillors *unacum dominis sequentibus*, and anticipates the style usual immediately after 1545, when the privy council, with its own register, has acquired a more distinct character, and the afforcing lords are subjoined in the sederunt as *extraordinarii*. The manner of summons must be left for separate discussion; but it may be stated at once that the 'letters' issued for attendance are 'letters close,' that their number and destination depend upon the discretion of the Crown as advised by privy council, and that there is great elasticity, regulated by the understanding that the extent of summons shall be commensurate with the importance of the business and the interests involved, and shall conform to a more or less admitted constitutional practice. We have seen that under James IV. the burghs insisted on being consulted on taxations. In 1563 and 1567 they renewed their claim, adding in the former case 'peace or war,' in the latter, the weighty affairs of the realm.¹

It is in the reign of James V. that the name 'convention' comes into fashion. The corresponding verb had always been in common use, with a wide application to any kind of assembly. Under Mary, 'convention' is associated, but not technically, with 'parliament' itself.² In the period now under notice the name is frequently given to gatherings which had a more directly military than deliberative purpose; and we have expressions like 'convention of all the realm.'³ Again, there is a 'convention' for the queen's entry into Edinburgh and coronation.⁴ But the mainly conciliar intention is evident on April 21, 1525,

⁸ *A.D.C.*

¹ *Sc. Hist. Rev.* xviii. 167-8.

² *R.P.C.* i. 342.

³ *E.g. T.A.* v. 212, 225; for the military sense, later, see *R.P.C.* iii. 544.

⁴ *T.A.* vi. 313.

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when all lords, spiritual and temporal, were to 'convene' and provide, if necessary, for defence.⁵ When Angus became Chancellor, on August 6, 1527, thirty-four persons attended council. This is clearly a 'general council' of a familiar type; and the name is expressly applied to a similar meeting at Stirling on July 17, 1528. On May 19, 1530, the King had 'great affairs' on hand, and had drawn up a list of lords whose 'counsel' he desired. The resultant meeting, which is certainly not of an unprecedented character, is referred to in a paper⁶ which mentions 'the last convention at Edinburgh' and contains a list of points 'to be avisit in this convention'—the convention which was to be held at Perth in October.⁷ On November 10 a 'general convention of all the lords,' for matters to be 'avisit and counselit,' was ordained for January. This proved to be a meeting of thirty-five persons, who included the provost of Edinburgh, with Foulis and Lawson, burgesses of Edinburgh as well as officers of the Crown.⁸ A council of forty-seven at Stirling on June 5, 1531, at which the privy council was nominated, is not designed; but it is evidently a 'general council' or 'convention.' Fifty-five attended a 'convention' on January 26, 1531-2;⁹ and there were less considerable 'conventions' on September 3 and on December 16, 1532.¹⁰ On November 18, 1536, three burghs were represented on a total sederunt of twenty-five.¹¹

Though it is obvious that 'convention' became the fashionable style, there was no breach of continuity in the institution itself, and the name 'general council' did not by any means fall into complete desuetude. On August 23, 1546, we find peremptory reference to prelates who owe presence 'at all general councils and courts of parliament.'¹² In the Act of 1587 for representation of smaller barons, 'general council' and 'general convention' appear to be convertible terms, though there is perhaps a suggestion that '*general* convention' is a convention of the estates, not a mere 'convention' of the lords, without shire or burgh commissioners.¹³ In 1588 the privy council itself applied 'general council' to what was now usually named 'convention': so did the burgh of Aberdeen in 1590.¹⁴ The appearance of 'general convention' and 'general council' in

⁵ *A.D.C.*

⁶ *A.D.C.* vol. xli. f. 84.

⁷ *T.A.* v. 442.

⁸ *A.D.C.* Jan. 9, 1530-1.

⁹ Cf. *T.A.* vi. 56.

¹⁰ Cf. *ibid.* 104.

¹¹ *A.D.C.S.*

¹² *A.D.C.S.*

¹³ *A.P.* iii. 510.

¹⁴ *R.P.C.* iv. 245, 534.

the Act of 1587, already cited, seems to be due to the fact that the revived measure of James I. used an expression which was now less familiar. At the end of the century Craig adopted the Latin 'conventio' to cover the whole historical series of meetings 'of the estates or orders outside parliaments.'³

It is evident that from James IV. to Mary there is a tendency to neglect the burghs in summoning 'general council' and 'convention.' That neglect, however, does not explain the change of style, which occurred under James V.; nor does the change of style indicate any fundamental alteration in the character of the assembly. The fashion of using 'convention' certainly came in after Flodden. Albany was not continuously present; and the Scottish nobles were left very much to their own devices, under the guidance of the Chancellor, Archbishop James Betoun. 'Convention,' with its suggestion of voluntary action, may have appealed to official persons. There was no monarch, and often no regent, to call for *consilium* or 'consale.' However that may be, 'convention' under James VI. and Charles I. was no more than a body of persons or representatives summoned, with a fairly steady increase of generality, to give *consilium* on matters submitted by the Crown. It was only in 1643, and again at the Revolution, that 'convention' acquired spontaneity and became a convenient organ for the expression of the general will in opposition to the reigning monarch.

SUMMONS TO 'GENERAL COUNCIL' AND 'CONVENTION.'

In discussing the method and character of the summons to 'general council' and 'convention,' it is advisable to begin at the point where the *Treasurer's Accounts* become available, avoiding speculations with regard to earlier practice. A reader of these accounts notices at once that 'general councils' are called by 'letters' under James III. and James IV.⁴ Under James V. additional details emerge. Every summons to give 'counsel' is by 'letter.' Archbishop James Betoun, for example, is sent for to advise by official 'letter' under the signet.⁵ Letters of this class are styled 'close' in 1515;⁶ they are issued, as appears elsewhere, *de mandato dominorum*—by the standing council:⁷ they are under the signet.⁸ In one passage we meet

³ *Jus feudale*, i. 8, 10.

⁴ *T.A.* i. 46, 362; iv. 323, 333.

⁶ *Ibid.* 67.

⁷ *Ibid.* 218.

⁵ *T.A.* v. 215.

⁸ *Ibid.* 234.

the whole composite phrase 'close letters under the signet.'¹ It is the work of the Secretary to summon 'general council' or 'convention';² and the notice is generally short—less than ten days in 1525, less than a week in 1536.³

The quarter seal ('testimonial of the great seal'), which is appended to 'precepts' for 'parliament,' reposes with the Director of Chancery, who superintends the necessary writing and distribution of the 'precepts.'⁴ The Secretary, on the other hand, has the signet;⁵ and it appears that the writers to the signet are those who write the king's 'letters.'⁶ At this time there are two signets, besides the great, privy, and quarter seals; and it is hinted that one of them is used for the judicial business of council.⁷ The suggestion seems to find confirmation from a reference, at the beginning of James VI.'s reign, to the judicial signet as the 'justice seal.'⁸

It must not be supposed that 'letters' are connected solely with 'council,' and 'precepts' exclusively with 'parliament.' When 'parliament' was under continuation by commission, the persons having power of parliament seem to have been called up by 'letters';⁹ and occasionally, when a new parliament has been summoned, we have personal appeals by 'letter' to attend.¹⁰ On July 18, 1528, there is a distinction drawn between 'precepts' for 'parliament,' which go out as of course 'in general,' and 'letters' which are to be directed 'in special' to certain lords required to afforce the 'council' a few days before 'parliament' and prepare business.¹¹ Again, on November 10, 1530, the distinction is express. 'Parliament' is to be on May 4, 1531: 'general convention' on January 8, 1530-1. In the former case, 'precepts' out of Chancery will be issued for matters 'to be tretit and concludit': in the latter, the Secretary will direct 'letters,' *if need be*, for matters 'to be avisit and counselit.'

The 'letters' issued for 'counsel' begin to be called 'missives';¹² and later the expression 'missive letters' in connexion with summons to 'convention' becomes familiar. In 1569 we have the variant 'close writings.'¹³ In February,

¹ *Ibid.* 208.

² *A.D.C.* April 21, 1525.

³ *Ibid.* and *T.A.* vi. 309.

⁴ *A.D.C.* Oct. 23, 1514; Sept. 19, 1526.

⁵ *Ibid.* March 10, 1524-5; cf. Aug. 1, 1524.

⁶ *T.A.* iv. 358; v. 128.

⁷ *A.D.C.* March 6, 1524-5 (cf. *A.P.* ii. 290) and July 16, 1526.

⁸ *T.A.* (MS.) Aug. 1567.

⁹ *T.A.* i. 51; *A.P.* ii. 108.

¹⁰ *A.D.C.* Oct. 12, 1515; Sept. 16, 1523.

¹¹ *A.D.C.*

¹² *T.A.* vi. 110.

¹³ *T.A.* (MS.) July, 1569.

1580-1, 'close writings' go out for 'convention,' and they are selective, not general—'some barons in the north.'¹ On another occasion certain lords summoned to a 'convention' received 'close letters' to stay their coming, 'the widder being stormye and evill.'²

The 'convention' of April 1583, summoned by 'close letters,' was to grant a taxation. The MS. accounts of the Treasurer do not mention a 'letter' to Edinburgh, which must have been cited, but they specify Aberdeen, Dundee, Stirling, Perth, Glasgow, Ayr, and St. Andrews. It is, therefore, very significant for the history of 'convention' in connexion with the question of supply to note the recorded verdict of the meeting. His Majesty had 'convenit a gude noumer of his estaittis'; but it was held that the attendance and the basis of summons were too limited for the importance of the business.³ The lesson was taken to heart in 1585. A 'convention' was called because the project of a league with Elizabeth was urgent, and could not with safety be deferred 'to a mair solemne conventioun of the haill estaittis in parliament.'⁴ A comparison of the sederunt with the Treasurer's accounts shows that at least fifteen burghs were called. Eleven sent commissioners: Edinburgh, Stirling, and Dundee two each: Renfrew, Irvine, Dysart, and Linlithgow were summoned but did not appear. In 1586, again, the accounts prove that at least fourteen burghs received 'letters.' Though there was a general tendency to enlarge summons in the case of the burghs, the basis contracted again in 1593. 'Conventions,' in fact, varied much in size, as the discretion of the Crown and the privy council was still dominant. The discretionary and exclusive power is admirably illustrated by a proclamation at the market cross of Edinburgh in November of 1593.⁵ None of the lieges, under pretext of approaching the 'convention' assembled at Holyrood, might come to Edinburgh or the residence of the king 'except sick as ar writtin for or cravis his hienes licence.' 'Convention of the estates' is not yet public; but there was some opinion that it ought to be—an opinion which finally prevailed.

The Act of 1587 for representation of smaller barons was now beginning to have an expansive effect upon 'convention.' A large taxation was proposed in January, 1593-4. Twenty

¹ *T.A.* (MS.).

² *Ibid.* Jan. 1581-2.

³ *A.P.* iii. 328.

⁴ *Ibid.* 423.

⁵ *T.A.* (MS.)

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burghs attended, while 'close letters' were directed apparently to two commissioners from each shire²—with discouraging results. The 1587 Act, founded on or combined with a scheme to extract money, was for the time highly unpopular with the barons; but in the end it had an important influence in assimilating 'convention' to 'parliament' by broadening the basis of summons and enlarging numbers. For May, 1596, close on seventy 'letters' were issued:³ about fifty elicited an active response.⁴ There was no increase in the number of burghs. But there is one significant fact. In March, 1596-7, when controversy over the Kirk was hot, upwards of a dozen burghs seem to have been called to 'convention':⁵ eighteen commissioners appeared: two each from Edinburgh, Aberdeen, and St. Andrews, three from Dundee, and four from Perth—the place of meeting. Undoubtedly the burgesses were interested. At Dundee, in May of 1597, when customs and coinage were in question, eight burghs were represented, Edinburgh sending four commissioners, Dundee and Perth two each. Another indication of the tendency towards publicity in 'convention' is the fact that the Acts of the 1597 meeting were proclaimed at the market cross of Dundee, and, later, at the cross of Edinburgh.⁶ We cannot be sure, however, that proclamation was a new thing. 'Convention of estates' was proclaimed in 1586;⁷ but personnel was still limited by the issue of letters close.

By 1608 we find further expansion. Fifty-seven, at least, attended 'convention'; and the 'letters' had been widely distributed, for the meeting was 'not so frequent' as the privy council expected.⁸ As long as we have the volumes of Treasurer's accounts—up to 1635—it is evident that 'convention' continues to be called by 'close letters' and is still limited in an unascertainable degree by selection. The tradition of what may be called 'afforded council' and the source of control are indicated by the fact that in 1625 members of privy council do not receive 'missives.'⁹ 'Convention' is not yet invariably, though it is usually, a meeting in which every estate is represented. In 1621 James contemplated a voluntary contribution from the

² *T.A.* (MS.).

³ *T.A.* (MS.).

⁴ *A.P.* iv. 97.

⁵ *T.A.* (MS.).

⁶ *T.A.* (MS.).

⁷ *Bibliotheca Lindesiana*: Proclamations.

⁸ *R.P.C.* viii. 506.

⁹ *R.P.C.* ser. ii. i. 141.

nobility and privy council; and the burghs were not called.¹ The lords held that 'this convention' had no power to impose an extent: contribution should be taken from the 'hail bodie of the estate' without regard to privilege; and it was evidently suggested that supply should be considered, as customary, by a representative 'convention' of all the estates.²

A comparison of the 'convention' in March, 1617, with the first 'convention' under Charles in October, 1625, indicates that the privy council proceeded upon some kind of principle in calling the burghs. The list for summons is in both cases very much the same.³ 'Letters' seem to have been issued to some eighteen or twenty of the wealthiest corporations. Similarly, there was selection among the shires, of which about fifteen appear to have been called. As extension went on, such places as Cupar, Culros, Montrose, Irvine, Dumfries, Burntisland, Elgin, and Brechin received notice. We have no evidence from the accounts regarding the issue of 'letters' for July, 1630; but we can compare the actual attendance at this 'convention' with the attendance at 'parliament' in 1633. In 1630 the numbers were one hundred and twenty-four: twenty shires produced thirty members: thirty-one burghs, thirty-two members. At 'parliament' in 1633, one hundred and sixty-three sat: twenty-seven shires, with forty-five commissioners: fifty burghs, with fifty-one commissioners. The burghs unrepresented at 'convention' are either distant or unimportant, or both.

Thus, while the selective practice in calling 'convention' by close letter persists, there is a marked and growing assimilation in respect of size between 'convention' and 'parliament.' The relative proportions, from the side of 'convention,' may be represented by approximate fractions: total attendance, three-quarters: shires present, two-thirds: burghs, three-fifths. The final step, by which 'convention' achieved the publicity of summons characteristic of 'parliament,' was taken in 1643. In that year the 'convention,' called in view of the king's refusal to summon 'parliament,' was proclaimed in his Majesty's name and by authority by the privy council, with concurrence of the commissioners for the peace and the common burdens.⁴ The proclamation, which was to be made at Edinburgh and 'other places needful,' charged 'all persons having interest' to attend.⁵

¹ *A.P.* iv. 589.

² *A.P.* iv. 589-90.

³ *R.P.C.* xi. 55; ser. ii. i. 141.

⁴ *A.P.* vi. 6, 12.

⁵ *R.P.C.* ser. ii. vii. 427.

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This action determined practice after the Restoration. Many warrants of the Treasury register survive, though there are serious gaps in the register itself. We learn that the 'convention' of June, 1678, was proclaimed by messengers-at-arms. The 'down-sitting' was also proclaimed at Edinburgh—another interesting assimilation, as will appear, to parliamentary practice. After the meeting, proclamation of the acts was made. For each occasion, with full solemnity, the cross of Edinburgh was 'covered' by the 'wardroper.' The only survival of the 'letters' by which 'convention' had formerly been summoned was in the case of the burghs. 'Letters' were sent to the magistrates; but there is no reference to other missives. The survival was no doubt due partly to administration expediency, which required a supplement to general proclamation at the head burghs of the shires, partly to the fact that the business was supply.

Sir George Mackenzie, in a passage⁴ which is often quoted, tells us that 'convention of estates' was called, in the Restoration period, 'upon twenty days.' That was certainly not the case under James V., when 'general council' or 'convention' was rather an afforced privy council than a meeting of the estates. It was not the rule in 1545,⁵ or even in 1589. A letter of summons to Stirling in the latter year, dated May 6, intimates a 'convention' on May 21.⁶ Unfortunately the accounts of the Treasurer cease to note the precise day on which the messengers set forth; and all we can say, by inference from the order of entry, is that an interval of about three weeks was becoming normal. That result almost inevitably followed as summons was extended. In 1678, when proclamation and printed bills were in established use, we find, consistently with Mackenzie's statement, that notice for June 26 must have been given not later than June 4.¹

The tone and phrasing of the 'letters' for 'convention' differed markedly from the peremptory *precipimus et mandamus* of the parliamentary 'precept.' The letter to Stirling, cited above, addresses 'our traist freindis' the provost, baillies and council, 'desiring you right eirnestly,' and so forth. In 1594 'parliament' was to assemble on May 27; while the estates were to 'convene' two days earlier in order to discuss relations with France. The royal letter to Stirling avoids any tone of command, and 'earnestly desires' the appearance of the com-

⁴ *Instit.* i. 3.

⁵ *R.P.C.* i. 3.

⁶ *Burgh Rec. of Stir.* i. 84.

¹ *Tr. Warrants: Contingent Expenses*, March 4 to June 4.

missioners on May 25.³ Turning back to a 'letter' prepared about 1544 in the regent Arran's name for some lord who was asked to attend 'convention,' we find reasoned appeal and not bald command. The situation is explained to the regent's 'richt traist cousing,' whom he 'prayis rycht effectuislie' to be in Edinburgh on a certain day, and 'failze nocht heirintill.'⁴

Though the resort to proclamation in 1643 with charge to 'all persons having interest' brought, or tended to bring, 'convention' to the same level as 'parliament' in respect of publicity in summons, this form of assembly still retained associations which made full publicity impossible. 'Convention' had been called, sometimes in a very sudden emergency, to give 'counsel' upon definite points. It was, in some ways, an excellent method of sampling opinion in the estates, of carrying the nation along with the government or adjusting policy to national feeling. But activity was confined to matters proposed by the Crown, which had complete initiative.⁴ There was no public invitation to submit grievances or articles.⁵ In addition, the financial exigencies of James VI. tended to connect 'convention' especially with supply. That connexion obviously had much to do with the gradual increase in publicity. In Scotland, as we have seen, supply was not an exclusive function of 'parliament.' What 'parliament' did was to see that the royal property was adequate and was not dilapidated: otherwise there must be taxation. No financial problem could arise in the earlier stages of our history from a continental policy; and few Scots were reluctant to subscribe at a crisis to thwart England. During the sixteenth and seventeenth centuries, as circumstances alter, taxation becomes more and more a ground of controversy; and English conceptions are gradually applied. Sir George Mackenzie drew a distinction in the Restoration period between 'parliament' and 'convention,' at first sight futile, in reality significant of the change. 'Parliament' may 'impose'; 'convention of estates' may 'impose, or rather offer, taxations.'⁶ In Mackenzie's time 'convention' had ceased to be legislative:

³ *Burgh Rec. of Stirling*, i. 85.

⁴ *Scot. Hist. Rev.* xviii. 169.

⁴ The only exception, as Prof. Rait points out, seems to be in 1625 (*A.P.* v. 184).

⁵ Contrast the parliamentary proclamation for 'supplications' to be presented to Lords of Articles, Oct. 1581; for 'griefs' to be handed to the Clerk Register, July, 1587; to give in articles 'dewly formit' to the Clerk Register, May, 1592 (*MS. Tr. Accounts*).

⁶ *Instit.* i. 3.

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after 1660 that form of assembly was called for supply, and was in each case expressly restricted by royal letter to the one function.'

'As long as 'convention of estates' was called by 'letters close' addressed to individuals or corporations, explaining the circumstances and making a personal appeal, it was advantageous for the Crown to maintain the traditional usage in asking for grants of money. When, however, this form of meeting came to be publicly proclaimed, and tended to lose its old selective character, the survival after the Restoration becomes a little hard to understand. The 'convention' of 1678 was summoned by public proclamation upon about twenty days: the 'parliament' of 1681 was proclaimed upon forty. The only difference, apart from the notice given, was that in calling the 'convention' Charles explained the motive and purpose, while the reasons for holding 'parliament' were stated briefly and in the most general terms.¹ The summons was equally comprehensive in each case: the obligation to attend was the same. But in proclaiming 'convention' the king took the estates into his confidence: the conditions of assembly gave less opportunity for concerting opposition: tradition and association favoured the appeal to loyalty.

It is interesting to note that the revolutionary 'convention' of 1689 was called by 'circular letters' from the Prince of Orange, and that proclamation was avoided.² This device, which had been adopted in England, was in Scotland easier, as it was a reversion to old practice and a recognised manner of assembly. William could not summon as a king; but it could be remembered that 'convention of the estates' acquired its name in a period of danger, when the monarchy was weak, and—what was probably present to the minds of Scottish lawyers—that in 1643 the nation, by means of a 'convention,' had already asserted its liberty of movement in defiance of a reigning prince.

A surviving letter of James VII. illustrates the elasticity and convenience associated with this form of assembly, which he desired now to make the nucleus of reaction. Writing to Viscount Dundee from Dublin on May 17, 1689, he forwards two letters, one to such members of the privy council as may be in attendance or may join, 'giving you power to act as a committee of public affairs with the power of our whole council, lest a quorum could not be had: by which authority you may turn

¹ Cf. *State Papers Dom.* 1666-7, p. 222; 1678, p. 221.

² *R.P.C.* ser. iii. v. 460; vii. 130.

³ *A.P.* ix. 3.

yourselves into a convention of states, to whom the other letter is directed ; and if you shall find it for our service, you may call as many to that assembly of the states as usually were by proclamation or letters, excepting such as being in rebellion against us we have declared rebels and traitors.' ³

SUMMONS TO 'PARLIAMENT.'

That the 'precepts' under the quarter seal were issued out of Chancery so as to give the statutory warning of forty days is evident. We find 'special letters' under the signet used in the time of James III., when it was thought desirable that the prelates and great lords should know why 'parliament' was to meet.⁴ The first action after ordinance in council seems to have been public proclamation ; ⁵ and there is evidence that the Acts were proclaimed after the meeting was over.⁶ 'Letters' were sufficient when 'parliament' was under continuation by commission.⁷ The 'letters' sent out to the lords sometimes served the purpose of a special whip. Thus on July 6, 1525, 'parliament' will assemble, and on June 8 the council ordains that all prelates and barons shall have 'letters' explaining that peace with England or preparations for defence are the alternative issues, and threatening that defaulters shall be treated as public enemies.⁸ Another case, on July 18, 1528, has already been cited, when 'letters in special,' besides the formal 'precepts,' are sent to those invited to come up earlier and advise.

Proclamation is very rarely mentioned at the end of the fifteenth century and the beginning of the sixteenth ; but it is clear that, if delivery and execution of 'precepts' were requisite in respect of those summoned to constitute the court, proclamation was equally necessary for the information of any who had petitions or articles to present. It may be presumed that the main part of the sheriff's duty, on receipt of his 'precept,' now that prelates, lords, and burghs had special writs, was to cause proclamation at the head burgh of his shire.⁹ In 1558 Mary of Guise was empowered, as regent, to have parliament 'proclaimed.'¹⁰ Notice by writ can scarcely have superseded what is evidently an old and necessary practice.

³ State Papers (Reg. Ho.), 277.

⁴ *Ibid* 176.

⁵ *A.D.C.* June 8, 1525.

⁶ Cf. *A.P.* ii. 409 (1542).

⁴ *A.P.* ii. 184.

⁵ *Ibid.*

⁷ Cf. *T.A.* i. 51, and *A.P.* ii. 108.

¹⁰ *A.P.* ii. 519.

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In 1581 we find that proclamation was an indispensable formality. In June heralds and trumpeters, at the market cross of Edinburgh, announced a parliament.⁴ The meeting was postponed, or rather abandoned. In October the Advocate produced before the house a letter under the signet by act of privy council, and evidence of proclamation at the head burghs whereby all other parliaments 'proclaimed of before' were discharged and 'this present parliament' was called.⁵ The necessity of proclamation for general publicity appears at the same time. A messenger-at-arms and a trumpeter passed to the market cross of Edinburgh and charged any who had action or suit to present their supplications before the Lords of the Articles.⁶ In 1585 the Acts were proclaimed first at Linlithgow, where the house happened to sit.⁷

We have now reached the stage at which the Act of James I. for representation of the smaller barons was revived and ratified. It may be gathered from the accounts of the Treasurer, where they enter into any detail, that 'precepts' went out to the lords of Parliament, temporal and spiritual, the sheriffs, and the burghs. What precisely the sheriff did in response to the order remains to be discovered. Did he warn the smaller barons of the shire? Or were they left with their obligation doubtful and in abeyance? Had they any other notice than a proclamation at the head burgh?

The entry in the account for May, 1587, tells us generally that 'precepts' were directed to bishops, abbots, earls, lords, *barons*, and provosts and baillies of burghs. The mention of 'barons' in place of 'sheriffs' seems to have special significance in connexion with the change which was in contemplation. The project of bringing the smaller barons into parliament by representation came up in 1585, and was remitted to the King.⁸ The remit acquires importance in the light of what followed. Maitland of Thirlstane, the Secretary, was evidently a prime mover. There were many considerations: the desperate state of the royal finances, leading to the annexation of church-lands in 1587; the debility of the spiritual estate, a debility actual and prospective; the menace of the General Assembly; the authority of the high court of the realm 'of lait yeris callit in sum doubt';⁹ the desirability of broadening 'parliament,' not only in face of the General Assembly, but because the contemplated

⁴ *T.A.* (MS.).

⁵ *A.P.* iii. 193.

⁶ *T.A.* (MS.), Oct. 1581.

⁷ *Ibid.* Dec. 1585.

⁸ *A.P.* iii. 422.

⁹ *Ibid.* 293; cf. 443.

annexation, if it gradually eliminated the ecclesiastical mid-superiors, as many expected it to do, would leave a large body of prosperous feuars completely unrepresented. Maitland may have seen his way to combine reform with immediate profit to the Crown. In 1587 the Treasurer's deficit had doubled itself in two years, and was about £50,000 Scots. James determined to bargain with the smaller barons for £40,000 in return for the privilege of appearing by representation. The first move was to insist upon the obligation of personal attendance in answer to summons from the Crown as immediate feudal superior. The revival of James I.'s Act, in which that obligation was assumed, cleverly forestalled any objection on the score of desuetude.

The smaller barons, accordingly, seem to have been called to the parliament of 1587. The king, now of age, ratified the Act of James I., and, *at the time of the parliament*, received an offer of £40,000.¹ The management, however, was too adroit to escape the accusation of sharp practice. Controversy drifted on into 1589, when James was still without commissioners of the shires, and was compelled to appoint them in default of elections. In May the privy council ordered 'precepts' for these commissioners, charging them to convene their counties and report choice in time for the issue of parliamentary writs.² The plan was altered, probably in deference to legal opinion; and 'precepts' for parliament were issued in June, with 'close letters' to the smaller barons selected as commissioners by the Crown.³ An entry in the accounts describes one batch of 'letters' as 'for charge of certain commissioners . . . to accept their new votes in parliament.' The exact grounds of procedure and the details of controversy are obscure; but the steady pressure had its effect. In 1592 eight barons were on the committee of Articles;⁴ yet the parliament of April 1594 was the first for which 'precepts' out of Chancery were directed to the commissioners of shires.⁵

We have seen that in the circumstances of 1643 public proclamation of 'convention' was adopted, without the issue of letters close. The abandonment of 'precepts' for 'parliament,' leaving proclamation to hold the field, arose from the Triennial Act of 1640, by which the next date was fixed before dissolution. The first triennial parliament would begin in June 1644; and publication of that appointment was to be sufficient, 'as if all

¹ *R.P.C.* iv. 245-6.

² *Ibid.* 384.

³ *T.A.* (MS).

⁴ *A.P.* iii. 530.

⁵ *T.A.* (MS.), March, 1593-4; cf. *R.P.C.* v. 127.

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former solemnities wer usit, whairanent his Majestie and Estates heerby dispens.'⁶ In 1645 Montrose proclaimed 'parliament' at Glasgow in the King's name, saying 'we do by these presents dispense with all ceremony and formality which otherwise the law provides, and that in regard of the present necessity.'⁷ At the Restoration, Sir George Mackenzie says, it was decided after some debate 'that the Parliament should be indicted by a proclamation; albeit Sir John Scott, then Director of the Chancery, contended that it should be call'd by briefes out of the Chancery, as the old custom was in time of peace: proclamation being only an extraordinary course used when the other was not practicable.'⁸ The question related specially to summons of members: proclamation for the public, as has been observed, would always be necessary. In 1669 a 'parliament' was proclaimed at Edinburgh market cross and at the head burghs; but there is no mention of the old 'precepts.'⁹ Besides the oral proclamation by heralds or messengers-at-arms after sound of trumpet, printed bills were in use, and had been at least since the early days of James VI.¹

R. K. HANNAY.

⁶ *A.P.* v. 588.

⁷ State Papers (Reg. Ho.), 177.

⁸ *Memoirs*, 12.

⁹ Treasury Warrants: Contingent Expenses, June 26-Oct. 29.

¹ *Bibliotheca Lindesiana*: Proclamations.

The Defiance at Trafalgar

THE following letter contains an account of the experiences of a midshipman at the Battle of Trafalgar. Colin Campbell, who lived to be an Admiral, was a son of Walter Campbell of Shawfield, and was eighteen years of age¹ in 1805. He was on the *Defiance*, a '74' ship of the line, commanded by Captain Durham, afterwards Admiral Sir Philip C. H. C. Durham, G.C.B., 1763-1845,² a fellow Scot. His letter takes its place by the side of the *Log* of the *Defiance*³ and the account of the battle in Durham's Memoir. It adds some particulars to the narratives of James⁴ and Clowes.⁵

The *Defiance* was twelfth in order in the lee column under Collingwood. At 12.10 on the 21st October, 1805, the *Royal Sovereign*, the leading ship, with Collingwood on board, broke the enemy line, but the *Defiance* only got into action at 1.40, drifting into the fight on that almost windless day which preceded the storm. After three quarters of an hour of firing at close quarters she made the *Principe de Esturias* retire from the battle and then turned her attention to the French ships which were concentrating their fire on the *Belleisle*. She singled out the *Aigle* and was engaged with her until firing ceased. Colin Campbell's account of the fate of the prizes *Aigle* and *Argonaut* and of the adventures of the prize-crews is of value.

Admiral H. H. Campbell, C.B., C.V.O., has kindly placed his grandfather's letter at my disposal for publication.⁶

DAVID BAIRD SMITH.

¹ For another boyish record, see the Navy Records Society's volumes on *Great Sea Fights*, which enshrine a *Letter from Mr. Henry Walker, Midshipman, to his Mother, Mrs. R. Walker, Preston* (*Logs of the Great Sea Fights, 1794-1805*, vol. ii. 322, 1900).

² *Memoir of the Naval Life and Services of Admiral Sir Philip Durham*, by Captain A. Murray (London, 1846) and *D.N.B.* s.v.

³ *Logs, etc., ut supra*, ii. 253.

⁴ *Naval History*, (London, 1847), iv. 76.

⁵ *The Royal Navy*, v. 155.

⁶ *V. Scottish Historical Review*, xix. 273.

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LETTER FROM COLIN CAMPBELL, MIDSHIPMAN

H.M. Ship *Defiance*,

Spithead,

Dec. 3rd, 1805.

MY DEAREST FATHER,

I take the first opportunity of a boat going ashore to write and inform you of our safe arrival at Spithead, and that I am alive and hearty after the glorious action of Trafalgar. I was very sorry I had not an opportunity of writing to you from Gibraltar, but I did not join the *Defiance* there till the frigate that went to England was under weigh. I hope, my Dearest Sir that you and all my dear friends at Woodhall are and have been quite well. I received that kind and affectionate letter that you all were so kind as to write to me, the day before we sailed from Spithead and which gave me most sincere pleasure. I wrote a long letter to Ellie to thank her for it, but which I never had an opportunity of sending. I will however, send it now to convince her that it was not my fault neglecting to answer such an affectionate letter and I now return you my kindest thanks for your share of it. I felt much gratified in knowing you approved of my letter.

I shall not attempt to give you a description of the action as the letters from Admiral Collingwood give a much better account of it than I could. I shall therefore only mention what particularly happened to ourselves. We joined Lord Nelson on the 6th of October off Cadiz and nothing particular happened until the 19th when some of the frigates inshore made the signal that the enemy's fleet was getting under weigh. The signal was instantly made to chase. We were then a long way off Cadiz and made all sail for it. We did not however expect they were coming out as they had often before got under weigh for a few hours. On the 20th the signal was made that the whole of their fleet had put to sea and that night we spoke the *Pheobe* (about 11 o'clock) who told us that the enemy's fleet were within three miles of us, consisting of 33 sail of the line. We were standing right for them and tacked directly. At daylight we saw them in a line to leeward of us and the signal was made for a general chase. We immediately bore up and set studding sails on both sides below and aloft, but it being light winds we did not get near enough to bring them to action till after noon. About 12 Lord Nelson made the expressive signal "England expects every man to do

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his duty!" Captain Durham then turned the hands up and made a short, but very expressive speech to the ship's company which was answered by three cheers. Everything being then ready—Matches lit—guns double shotted with grape and rounds and decks clear—we piped to dinner and had a good glass of grog.

The Royal Sovereign commenced the action by running right through their line and bringing one of their three deckers to close action. We continued running down till half past one when we began firing, but not before a great many shot had been fired at us and cut our running rigging to pieces.¹ In ten minutes we got close alongside of the Prince de Esturias, Spanish three decker, and hammered away upon her within pistol shot for $\frac{3}{4}$ of an hour when not being able to stand the *little Defiance* any longer she bore up before the wind and ran to leeward, when we got her stern to us we raked her hotly with plenty of grape and canister. The slaughter on board of her must have been very great. She ran to leeward and never re-entered the action again. She only killed one man on board of us; the whole of her shot went through our rigging and over our mastheads. They fired so high that they shot away our main-top-gallant truck. Every one of our shot told upon her and made the splinters fly.

While engaging her we had a Frenchman playing away on our bow, so we ran alongside of her and at 3.10 lashed ourselves to her, where we had it pretty hot, till finding we had silenced her guns—we boarded her and took possession of her poop and forecastle.² One of our men ran to her mast-head—hailed down the French pendant and hoisted an English ensign and pendant, but her men still keeping up a heavy fire of musketry from her tops and lower deck and every now and then firing some guns and throwing stink pots into the ports which killed a number of our men—we recalled the boarders, hauled off within pistol shot and turned to on her again—every shot of ours going through and through her. About 4 they called for quarter which we instantly gave and sent a lieutenant and 20 men to take possession of her.

¹ Campbell makes no reference to the encounter with the *San Juan Nelponemo*, of which Durham's biographer writes: '*The Defiance* first ran alongside the *San Juan Nelponemo*, and was just going to pour in a broadside when Captain Durham observed the Spanish captain, surrounded by his officers, making signals with their hats, and ordered the crew of *The Defiance* not to fire, upon which the Spaniard hauled down his colours without firing a shot.' *Op. cit.* p. 61.

² *I.e. l'Aigle.*

The slaughter on board of her was horrid, the decks were covered with dead and wounded. They never heave their dead overboard in time of action as we do. We had 18 men killed amongst whom was our 2nd lieutenant, boatswain and one midshipman. Captain Durham was slightly wounded in the leg by a splinter. Four of our midshipmen were also wounded and 50 men. By 5 the action was finished and nothing to be seen, but wrecks of masts and yards floating about and some hundreds of dead bodies.

About this time the 'Achille' (French 74) took fire and after burning about 2 hours, blew up with a terrible explosion. Many hundreds were in her at the time, many jumped overboard and were drowned. Four French ships (those which Sir Richard Strahan has since taken) made all sail away at this time, none of our ships being in a condition to follow them. Our fore and main mast bowsprit and all our topmasts were shot through in many places and all our standing and running rigging cut to pieces. We were all night employed splicing the same. In the morning it came on to blow a gale of wind. The Aigle had drifted close into Cadiz; we stood in to take her in tow, and found she had lost all her masts during the night. We found it impossible to take her in tow, it blew so hard and we were obliged to leave her with Lieutenant Purchase, a Master's mate and 12 seamen on board lying close on the shoals of Trafalgar and we made all sail to windward. On the 23rd twelve of the enemy's fleet got under weigh and stood out—we expected they were going to give box again and formed the line, but they only came out a little way and retook the St. Anna, she being close in we could not afford her any assistance.

On the 25th we attempted to take the Argonaut (Spanish Prize) in tow, but there being a very heavy sea we could not. I was then sent with Lieutenant Hargrave and two other midshipmen and 20 men to bring her to an anchor, which we did after a good deal of difficulty, there being 600 Spaniards on board and most of them drunk and her decks full of wounded. It came on to blow a very heavy gale of wind that night and continued to blow harder and harder till the night of the 26th when it blew harder than I ever saw it. We did not expect she would ride the night out with us. The Spaniards were terribly frightened and all turned-to, to pray. She gained on us at the pumps fast and the sea broke clean over us. We hove all the main deck guns overboard and let go the sheet anchor under

foot in case the best bow anchor should part ; about 12 at night the iron littior broke in two and the rudder knocked about so much we thought it would knock her stern post in, but about 3 in the morning it broke adrift altogether which we were very glad of. At daybreak we found that our best bow anchor had parted in the night, but the sheet anchor still held on. We found that all the other hulks had gone ashore in the night. We hoisted a signal of distress and fired several guns, but could not see the 'Defiance' anywhere. The two boats we came on board in had both sunk astern on the 25th.

On the 26th the gale abated a little and the Donegal and the Leviathan both sent their boats to our assistance. I and 12 men went on board the former and the Lieutenant and the rest went to the latter. I was pretty well off there as I fell in with an old shipmate. The Spaniards were all taken out and the ship soon after sank. I remained in the Donegal till the 2nd. She was of great use in getting the men out of their wrecks and burning those they were likely to get off. While I was on board of her two French frigates and a brig came out to exchange prisoners and brought out our Lieutenant and seamen who had been in the Aigle. They had drifted ashore close to Cadiz where they lay two days on the rocks—the sea running so high they could not leave her. When the weather grew better the Spaniards sent boats to bring them on shore and plenty of mutton for the English officers. Many of the French men were drowned who attempted to get ashore before the boats came. Our people were treated with the greatest kindness by the Spaniards, had rooms given them to live in and the key to go out and in when they chose. They were quite sorry to come out in the frigate as they had got jack-asses ready to go round to Gibraltar and expected to have a famous cruize. I went in the Pheobe to join the Defiance who was gone round to Gibraltar with the Temeraire in tow. I was not a little glad when I got on board of her again and shipped a clean shirt, a luxury I had not enjoyed for some time. We were at Gibraltar a few days and then sailed for England. Captain Durham gave me an order to act as lieutenant and I did the duty most of the way home. I suppose we shall go into dock directly as our masts and bowsprits are very badly wounded. Captain Durham left us yesterday on three week's leave for London. We arrived too late for me to pass this month so I must wait till next. We have to-day landed 300 prisoners.

And now my Dearest Sir I think I have told you most of our adventures—which I am afraid you will find much difficulty in reading, but I hope you will excuse all blunders as I can hardly stir for French buffers in the berth. I hope it will not be very long before I have the pleasure of seeing you. I long much to see the old 'Land of Cakes' again and all my dearest friends there. I hope you will have the kindness just to write me a line that I may know you are well. I am sure you must be tired reading—I will therefore conclude with my most affectionate love to all at Woodhall and remain—my Dearest Papa

Your ever dutiful and affectionate son

COLIN CAMPBELL.

P.S. John M'Lellan is quite well and desires his best respects to you.

The Vice Admiral, and the Quest of the 'Golden Pennie'¹

NO definite record of the existence of a Vice Admiral of Scotland has been traced prior to the assumption of the Admiralty by Lennox, though references to Admirals Depute are frequently found, and powers of admiralty in the widest sense, were normal functions of certain Regalities such as that of St. Andrews, and were exercised by Bailies appointed for the purpose.

On the other hand, the commission given *in extenso* below expressly refers to the powers that 'to the office of vice admiraltie is knawin to pertene,' and discharges 'all utheris vice admirallis appointit of befoir.' Perhaps the appointment of Wemyss of Bogie to be 'our onlie generall vice admirall of this realme' indicates that his position was intended to differ from any previous ones carrying the same title.

On 5th August, 1591, Ludovick Duke of Lennox, Great Admiral of Scotland, appointed James Wemyss of Bogie to be Vice Admiral for a period of seven years. Bogie was the second son of David Wemyss of that ilk and Cecilia Ruthven his wife. Lennox had married his cousin, and, from other papers, it is clear that the two men were close personal friends.

The Commission, signed 'Lenox' and sealed by him as Great Admiral, remained in the possession of the Bogie family until the death of the fourth baronet in the later years of the eighteenth century. With numerous other documents, it then came into the possession of the surviving daughter, Barbara Wemyss, wife of Sir Henry Seton, Bt., of Abercorn. These Bogie papers have only recently come to light. In addition to the Commission itself, there is a copy or double, apparently dictated from the original, which bears no seal and is signed

¹ See also 'The Admiral of Scotland,' by A. R. G. McMillan, *S.H.R.* xx. 11. Sir Bruce Seton's article was in the hands of the Editor before Mr. M'Millan's was published.—Editor *S.H.R.*

‘Stewart.’ Whether this signature was put in by oversight by the copyist instead of ‘Lenox’ it is impossible to say.

The Commission by the Duke of Lennox is as follows :

Be it kend to all men be thir present letters Us Lodovik Duke of Lennox erle Dernlie lord Tarbolton Methvene and Aubigny now grit admerall of Scotland in place of Frances sumtyme erle of Bothuell and grit admerall and thairby havand sufficient power to the effect under-written To have maid constitutit and ordanit, and, be the tennour heirof makis constitutis and ordanis our richt weil belouit James Weymes of Bogie our onlie generall vice admerall of this realme haill vatteris iles boundis raidis borrowis poirtis and hewins thairof gevand grantand and committand to him our full frie plaine and irreuocabell power expres bidein and charge Admerall court or courtis within ony burght hewin or poirt of this realme or within the sey mark to fens hald begin affix affirme and the samyn als oft as neid beis to continew and to proceid and minister justice in all and sindrie actionis alsweill ciuill as criminall aither done and committit within this realme or outwith the samyn pertening and concerning the jurisdiction of the said admiraltie conforme to the lawis thairof surrogatting and placeing the said James in our full richt titell place and possessioun of the said office With all fies casualities proffeittis previlegis wrak wauche pyrrattis guidis and utheris dewties quhatsumeuir belanging thairto Unlawis amerciamentis escheitis and casualteis of the saidis courtis to ask crave ressaive intromet with and uptak and thairupone to dispone at his pleasur and gif neid beis to poynde and distrenze thairfore all and sindrie wrak wauche and pyrattis guides that hes fallin or salhappin to fall heireftir be sey and intromett with be ony personis vpon the land to serche seik seas fens arreist intromet with and at his awin hand to uptak quherever the samyn can be apprehendit ane peice of gold callit the goddispenny¹ at the bying and selling of ilk schip and bark or ony pairte thairof to uplift and gif neid beis to call follow and persew thairfore conforme to the lawis acquittances and discharges thairupoun to gif and deliuer quhilkis salbe als sufficient as we had gevin the samin Admerall deputtis procuratour fischallis ane or ma clerkis seriandis dempstaris and all vtheris officeris and membris of Court neidful undir him in the said office to mak creat admit and caus be sworne for quhome he salbe answerable Summondis preceptis and utheris letters and chairgis in our name to direct Witnesses and persones of assys to summond ilk ane under the pane of fourtie pundis Arrestmentis to mak and lous and generallie all and sindrie utheris thingis to do exerce and vse that to the office of vice admiraltie is knawin to pertene and quhilkis we might do thairintill our selff gif we war personallie present Oblissing us faithfullie to hald ferme and staible all and quhatsumeuir thingis our said vice admirall be himselff or his deputties lauchfullie leidis to be done in the said office upone our honour and fidelitie

¹ According to Jameson the ‘goddis penny’ was arles money, or alternatively, money paid to a superior on entry to lands. The context here shows that it was also a casualty of the office of vice admiral, payable in all cases of sale or purchase of ships and boats.

And this present commissioun of during the space of sevin zeiris nixt eftir the dait heirof but ony reuocatioun contradicioun or impediment to induire and continew Discharging be thir presentis all vtheris vice admirallis and admerall deputtis appointit for vsing of the said office of befoir of all forder using or intronetting thairwith and of thair offices simpliciter for euir. The wittnes quhairof we haif subscriuit thir presentis with our hand and ordanis our greit seill of office to be affixt thairto at Edinbrugh the fyft day of August the zeir of God j^m v^c four scoir ellevin zeiris Befoir thir witnesses M^r Henry Keir our secriter M^r Williame Methven James Lundi Walter Keir our servitouris Williame Allane and our admerall depute and Thomas Bruce servitour to the said James Weymes

LENNOX.

The duplicate commission has the following endorsed on it :

Curia tenta apud Edinburgh eodem quinto Augusti 1591
Bogie gaif his aitht and acceptit

STEWART.

Although only appointed for seven years, Bogie—Sir James, as he subsequently became—held the office of Vice Admiral of Scotland for at least twenty-seven years. No record remains of any appointments made by himself to the office of Admiral Depute; though his son David Wemyss, when signing a legal document in 1622, describes himself as Admiral Depute, and his brother Sir John Wemyss became 'Admiral of the Forth' from Dysart to Leven in 1612. This appointment, however, may have been under the Regality of Dunfermline.

By an instrument, the date of which is left partially blank, but is probably 1591, Lennox, 'with the speciall and expres consent' of Wemyss, appointed another kinsman of his wife, Alexander Ruthven of Pitcanie, to be Admiral Depute on the coast from Peterhead to the 'Weik of Caithnes'. The duties and powers of an admiral depute are detailed at length, and there is some indication of the profits of the office to the holder. 'Unlaws, amerciamentis and escheitis of the saidis courtis' are to be applied to 'the said Alexanderis awin use.' But 'veschellis guidis and mercheandice that onie wyse may be comptit or holdin ane lauchfull prise or utheris unlauchfull guidis' are to be confiscated, and the Admiral Depute is 'haldin to ansuer to us upon compt' for them.

There is no reference here to the 'peice of gold callit the goddis penny' which is mentioned in the commission of the Vice

Admiral, and it may be inferred that that casualty was regarded as the perquisite of the Vice Admiral alone.

The Great Admiral proposed; but his proposals failed to materialise, as regards the elimination, from offices of admiralty, of those who had enjoyed them and wished to continue doing so. No correspondence between the Duke and his Vice Admiral during the original tenure of the latter's appointment has been preserved among the Bogie papers; but it is certain that, during the eight years from 1591 to 1599, there were conflicts with individual holders of office which were not altogether successful.

It is, indeed, evident that the Great Admiral found his position fell far short of his expectations and intentions, for, on 18th May, 1599, he issued a precept to all 'officeris of the Admiraltie' reviewing the existing conditions, and complaining that:

'oure said office is nocht only wranguslie and uniustlie usurpit be certane personis nawyis ressaueit nor admittit be us bot alsua litill or nathing regairdet be the liegis of this realme and the iurisdiction and liberteis thair of greitlie imparit in hie and proude contempt of our soverane lord.'

Orders were accordingly given for the proclamation at the mercat crosses in 'Edinburch, Bruntyland, Kingorne, Kirkcaldie, Dysert, Pettinweme, Anstruther, peir and schoire of Leith,' of the claim of 'us and James Wemys of Bogie our general and onlie vice admirall of this realme' to exercise their respective offices, and to be obeyed by the lieges, 'nochtwithstanding of quhatsumevir pretendit richt command or direction gevin . . . in the contrair.'

In addition to these general instructions the precept directs that 'ze . . . expreslie inhibite and dischairge James Halkerstoun and all utheris . . . officeris creat and admittit be him of all further using . . . our said office of admiraltie, fies, casualteis or dewteis therof,' and that no officer of the Admiralty shall 'acknowledge intend or obey to the said Coronall James.'¹

From the fact that all but two of the places specially mentioned in the precept are in Fife, it may be inferred that there, more than

¹ 'Coronall' James Halkerstoun was no doubt a descendant of the George Halkerstoun, burgess of Edinburgh, who married Margaret Crichton, the natural daughter of William Lord Crichton and the Princess Margaret. George Halkerstoun's son by that marriage was called James, but could scarcely have been actively engaged in 1599, as his father was killed at Flodden. This Halkerstoun is probably the same as the 'nottour' pirate referred to in the Register of the Privy Council, 1584.

elsewhere, was manifested that 'hie and proude contempt' of which the Great Admiral complains. The reason why Fife should have been specially recalcitrant is a matter for speculation; but it was probably traceable, *inter alia*, to a dispute regarding the 'goddis penny' referred to in the Vice Admiral's Commission.

For a time the Great Admiral's precept seems to have had satisfactory results, even in Fife. On 26th December, 1612, Lennox wrote from 'Quhytehall,' London, a private letter to Bogie, now Sir James, commenting on the fact that:

'the estait of the admiraltie is now, eftir long travelles, brocht home to the ovin integritie, only the previlegis of Dunfermeling granted and past to hir Majestie.'

He then suggests that the time has come for him to have some of the 'proffeit' of the office,

'seing to this houre I never tasted much thairof.'

In a later letter he refers to an impending audit of the accounts and to the necessity for a skilled survey of the books.

A reference to his Commission shows that one of the perquisites of the Vice Admiral was the right to uplift a casualty called the 'Goddis penny'—or, as it subsequently came to be called, the Golden Penny—'at the bying and selling of ilk schip or bark or ony pairte thairof.' Whether both purchaser and vendor had to pay is not clear; but at a time when, in Fife at least, the multiple ownership of vessels was common and merchants were interested in a fractional part of a vessel and its equipment, the total value of this casualty must have been considerable.

The value of the 'goddis penny' is not stated in the commission, but in the year 1630 it was a rose noble of 16 merks Scots.

In 1618 a dispute arose between the Vice Admiral and the tutors of John Lord Lindsay of the Byres as to their respective right to the golden penny. Both claimed it, the former under his commission of Vice Admiral, the latter on the ground that Lord Lindsay was

'heretably infest of the offices of Stewartrie and Bailliarie admiraltie customarie searcherie Crovnarie Justiciarie and all utheris offices of the said Regalite benorth the Forth'

together with all casualties pertaining thereto,

‘and especiallie the golden pennie.’

The immediate sufferers from this dispute were the merchants and shipowners of every seaport town in the Regality of St. Andrews, who were required to pay the casualty twice over, and they petitioned the Crown asking that the ‘Lordis of our Counsale’ shall be called upon to decide which of the claimants ‘has the best richt thairto.’

A copy of this petition, undated except for the year, is included among the Admiralty papers of Sir James Wemyss, and is endorsed ‘Coppie for the larde of Bogie.’

On 2nd April, 1618, a precept was issued under the Signet ordering Lindsay and Wemyss to appear before the Council on a date mentioned, bringing with them their ‘infestments richtis provisionis decreittis letters and chargeis quhairby ilk ane clames richt and entres to the said golden pennie.’¹

Pending the settlement of the rival claims neither party was to demand or pursue for payment of the casualty from the petitioners.

Prolonged search through the Records has failed to show that the case was ever heard at all, and we are left in the dark as to the arrangement finally arrived at. Bogie himself was now well up in years, and in documents after this date he is no longer spoken of as Vice Admiral, so perhaps he gave up the contest.

In 1630, however, the ‘golden pennie’ is again a source of trouble. In that year, among the grievances submitted by the town of Leith to the Privy Council against Edinburgh, was one to the effect that

‘they have purchast, as said is, heretablie disponit to them the undoutit richt and cheiff casualitie belonging to the Admirall, quhich is the golden pennie, that is ane rois nobill at sixtein markis Scottis money, off ilk schip within the landis or wateris off Leith Newheavin and Phorth’

(*Reg. Priv. Counc.*, Second Series, iii. p. 660.)

This suggests that either the successor of Ludovick Duke of Lennox, who had died in 1624, or of Sir James Wemyss of Bogie

¹ Mr. W. Angus, of the Historical Department, General Register House, who has indefatigably assisted me in the pursuit of the golden penny, has drawn my attention to Dr. John Stuart’s report on the MSS of the Earl of Glasgow preserved at Crawford Priory (3rd Report, p. 405). After detailing the various offices, Dr. Stuart says that John Lord Lindsay apprised them from William Learmonth of Dairsey in 1609. Learmonth probably held them in fee and heritage of the Priory of St. Andrews.

realised his claim to the casualty in so far at least as the South of the Forth was concerned, and thereby gravely reduced the value of the appointment ; or alternatively that the Earl of Winton, who held the office of Justiciar and Coronator of the Regality of St. Andrews, south of the Forth, did so.

An investigation of the circumstances leading up to this disposition and of the consideration given by the City of Edinburgh would be of interest.

BRUCE SETON.

The Office of Sheriff in Scotland

ITS ORIGIN AND EARLY DEVELOPMENT

THE early history of the judges in Scotland has not so far been investigated; in fact, the historian has left the functions of the sheriff at periods prior to the eighteenth century in a condition vague and indefinite. Although the historian has neglected him, the etymologist has fixed the origin of the title beyond doubt by the quotation from the first half of the eleventh century where the name occurs in the form 'scirgerefa' (*N.E.D.*).

The origin of the office dates from Merovingian times, when an official known as 'graf,' whose latinized title 'comes' appears in the law of the Ripuaires, *circa* 790, and elsewhere as 'Comes aut Grafo.'¹ The Graf, an official of great power and influence, was entrusted with the administration of a province—*Pagi-civitatus*. The Carolingians followed and improved upon the established system. The 'comites aut grafen' had a check placed upon them by the appointment of *vicecomites* (vicomtes) or *missi*, who, with '*judices*' assisted the comte, and in his absence officiated in his stead. The vicecomites or missi had also the duty of returning to the Imperial Exchequer two-thirds of all fines, leaving the remaining one-third to the comte.² The comté is generally understood to be the area of a comte's jurisdiction, but Coulanges maintains that the comté meant, not a geographical unit, but an office and an honour.³ It was the comte and his agents whom the emperor addressed in his *diplomas*, and through whom he communicated his demands to his subjects. The execution of the laws and the maintenance of public order were entrusted to the comte. He was also responsible for the collection of the emperor's dues and taxes, and the proper

¹ Fustel de Coulanges, *Institutions Politiques de l'ancienne France* (Les Transformations de la Royauté).

² *Ibid.* p. 433.

³ 'Un comté n'est pas une propriété, c'est un office et un emploi, *ministerium*. C'est en même temps une dignité, honor (*Instit. Pol.* p. 427).

maintenance of roads and bridges. He was the local representative of the emperor, led the territorial army which he kept ready for the field, and, in fact, acted in his own district with all the powers of the emperor himself. There was no Provincial Assembly, and for long no check upon the administration of the comtes.

The Capitularies of Charlemagne frequently refer to abuses and excess of power on the part of comtes. To remove these evils Charlemagne appointed *missi*, who were independent of all save the emperor. The missus was later (*circa* 774) termed *vicecomes*.⁴ During the subsequent reign of Louis le Debonnaire the term *vicecomes* supersedes that of *missus*. In England the Normans found an official corresponding to the Frankish 'graf, and called in the south by the somewhat similar name, 'gerefa,' in Northumbrian English, 'graefa.' This official, called a *vicomte* in Normandy, retained the Latin form of that title in written documents, being styled *vicecomes*, but he was a 'sheriff' in the vernacular. On the authority of the *New English Dictionary*, we are told that *gerefa* and *graf* were probably not connected. The *gerefa* was a person in authority in a shire, a wapentake, a hundred, a burgh, or a small township,¹ but the *scir-gerefa*, the most important of these officers, seems to have fixed the title 'sheriff,' while the *port-gerefa* becomes the port-reeve.

While the Normans were establishing their vicomtes or sheriffs in England, the Celtic kings of Alba adhered to the judicial customs of their ancestors. Below the king, and rendering an uncertain degree of allegiance to him, were Maormors who, as lesser kings, were invested with the rank of supreme judges, the ordinary duties of a judge being entrusted by the Maormors to Toisechs or Toschachs, and Brehons.

Into this administrative scheme David, youngest son of Malcolm III. and Margaret of England, fresh from the Court of his brother-in-law, Henry I., introduced the sheriff. To the Foundation Charter of Selkirk Abbey in 1120 'Cospatrick Vicecomes,' the earliest recorded sheriff north of Tweed, is a witness:² No place name is added, but from the fact that (*circa* 1126-47) reference is made to the 'lands of Crailing in

⁴ Glasson, *Hist. du Droit de la France*, vol. 2, p. 478.

¹ Greve autem nomen est potestatis . . . Est enim multiplex nomen ; greve enim dicitur de scira, de wapentagiis, de hundredo, de burgis, de villis.

² *Lib. de Calchon*, No. 1.

Roxburgh gifted to Jedburgh Abbey by Cospatrick the sheriff,¹ and that sheriffs were given lands in their sheriffdom,² it is fairly clear that Roxburgh was the sphere of Cospatrick's activity.

Later—after David's accession to the throne—sheriffships are established in Berwick (1128),³ Scone (1130),⁴ Stirling (1125),⁵ Edinburgh (1140),⁶ Forfar,⁷ Inverness,⁸ Aberdeen (1136),⁹ Linlithgow,¹⁰ Haddington¹¹ (*ante* 1140).

It is important to note that these, and every one of the sheriffdoms instituted before 1292, were at a castle of the king. Wherever he had a castle there the king installed a constable and a sheriff;¹² but where a royal castle already stood and a new one was built in its vicinity—as at Dundee, Jedburgh, and Caerlaverock—the king gave jurisdiction to the sheriffs already installed—at Forfar, Roxburgh and Dumfries—and did not create new sheriffs for the new castles.

The castle was the capital of the sheriffdom. There the sheriff resided, there he held his Head Court at which all freeholders of the province had to be present whenever the court was held; and there those owing service at the periodic weapon-shaws probably mustered.¹³ For above all the sheriff with the barons was charged with the military fitness of the men of his district.¹⁴ If the baron failed the sheriff had to make good¹⁵ by collecting penalties. He led his men to battle¹⁶ and kept the

¹ *R.M.S. App. i. Nos. 92-94; Reg. Glas. No. 4.*

² *Hist. MSS. Com. Rep. Hamilton MSS. p. 23.*

³ *A.P. i. p. 359.*

⁴ *Reg. de Dunf. No. 29.*

⁵ *Reg. de Dunf. No. 6.*

⁶ *Reg. de Dunf. No. 11.*

⁷ *Lib. de Scon. No. 17.*

⁸ *Reg. Moray, p. 10.*

⁹ *Reg. Epis. Abdn. p. 3.*

¹⁰ *Reg. de Dunf. No. 11.*

¹¹ *Reg. Prior St. And. p. 191.*

¹² Cf. George Neilson, *Garrison Origin of Burghs, Jurid. Rev. xiv. p. 136.*

¹³ No details are extant of twelfth and thirteenth century wapenshaws; those shown in the muster roll of Annandale, held on 15th August, 1541, on Birrenswark Hill, are probably not unlike their predecessors: The lord of Holmendis—100 men; lord of Wormonby—16 men; lord of Wamphray—80 men; lord of Mouswald—80 men; lord of Johnstoun—100 men, etc., etc., etc. Sum total, 1,312 men (*Hist. MSS. Com. Annandale Papers, p. 66.*)

¹⁴ *A.P. i. p. 473.*

¹⁵ *A.P. ii. p. 18.*

¹⁶ Sir Patrick de Graham, Sheriff of Stirling in 1282-1292, fell at Dunbar, 'a goodly knight all dressed in harness meet,' 'lamented and applauded even by his enemies.' Sir Duncan Balfour, Sheriff of Fife, fell in one of the battles of 1298 against the forces of Edward I. (*Hailes Annals*). Sir Walter Ogilvie, Sheriff of

castle in repair² by a levy of duties on the vassals.³ In the castle the sheriff kept all the records of the lands and owners in the sheriffdom.

So strong is the sheriff's relationship with the castle that he is occasionally termed 'Sheriff of the Castle.'⁴ Moreover, the references to the sheriff in the cartularies of the twelfth and thirteenth centuries are to the Sheriff of the *Burg*, which may mean the fort or castle or the part adjacent to the castle. Thus, it is the Sheriff of Forfar *in* Angus, Sheriff of Kincardine *in* *le Meryns*,⁵ Sheriff of Kinross, not of Fothryf; Sheriff of Crail⁶—until 1212, when the Sheriff of Crail was styled Sheriff of Fife.

No shires in the modern sense existed in thirteenth-century Scotland. A 'shire' then was a small area—Clat, Gatemilc, Kelland, Rate, Davyot, Coldingham, Kirkcaldy were instances; but the early shires in Scotland had no connection with the sheriff.

The oldest 'Description' of Scotia (1165) which we have divides the country into Earldoms, not shires: Angus with Mearns; Athole and Gowrie; Strathearn with Menteith; Fife with Fothrif; Mar with Buchan; Moray and Ross;

Angus, was killed in a fight with the highlanders at Gasclune in 1392. Sir Alexander Ramsay, distinguished for his capture of Roxburgh Castle from the English and rewarded for that service by obtaining the sheriffship of Roxburgh, was murdered by a rival claimant, the 'Knight of Liddesdale' (Sir William Douglas), who, though he succeeded to the office, was in turn murdered.

² See *Exchequer Rolls*, vol. i. pp. 5, 38-39, etc.; *Cal. Doc. Scot.* ii. *passim*.

³ This duty, maintained at the expense of the Crown Vassals, continued to be enforced in the sheriffdoms of Edinburgh, Berwick and Haddington—the respective amounts being 6s., £1 17s. and £2 8s. 5d.—till 1708 or 1720 (Clerk and Scrope, *History of the Exchequer*, p. 159). The Church saw to it that they paid no more than their legal dues.

The Abbey of Paisley, liable in 5 chalders of oats or wheat annually for upkeep of Dumbarton Castle, had been troubled by the 4th Earl of Lennox for a larger sum.

On their appeal to the king the earl was ordered to cease trying to extort more than the legal dues (*Reg. de Passelet*, pp. 177-8).

⁴ *Viccomes de Castello Puellarum* (*Reg. de Neubottle*, p. 122); '*Custodiam castri nostri de Stryveline cum officio viccomitatus eiusdem*' (*R.M.S.* i. 67).

⁵ *Antiq. Abdn. & Banff*, iv. p. 605.

⁶ Besides the references given above there is one as late as 1372 when the Burgh of Cupar is designed '*Burgus sive Vicecomitatus de Cupar*' (*A.P.* xii. (Supp.) 16). In France in the twelfth century the vicecomites were in the habit of adding to their title the name of the most important domains contiguous to their heritage. The vicomtes of Poitiers, for example, were styled Vicomtes de Thouars; the Vicomtes of Toulouse, Vicomtes of Bruniquel (Luchaire, *Manuel des Inst. Fran.* p. 283).

Caithness. In the map (1292-96) preserved in the British Museum no reference to a shire appears. We find there Tynedale, in which are the castles of Roxburgh and Jedburgh; Lothian, with the castles of Berwick, Edinburgh and Stirling; Fife, with the Burgh of St. Andrews, and the castle of Leuchars; Angus, with the castles of Dundee and Forfar; The Mounth, a vast place without vegetation; Mar; Buchan, with the castles of Elgin and Spynie and the burgh and castle of Aberdeen; Moray; Ross; Caithness; Orkney; Ayr; Galloway, with Annandale; Dumfries Castle; Kirkcudbright.⁷

The sheriff, who began his career in the castle, divided with the constable (whose office was frequently held by the sheriff) certain specific duties.⁸ The constable had jurisdiction in all cases of riot, disorder, bloodshed and slaughter committed within four miles of the castle;¹ all other disputes were referred to the sheriff.² In England the sheriff's room in the castle was called the 'Shire House.'³ In Scotland, until Tolbooths⁴ were built, it held the Head Court and the prison⁵ of the sheriffdom. Freeholders as a rule held their lands on condition of rendering one or more suits at the head court—a duty, unlike suits elsewhere, which required no summons. The sheriff held his head court thrice a year.

⁷ *Chron. Picts and Scots*, pp. 136, 214.

⁸ A most important duty imposed upon him was the payment to certain churches of the 10th—sometimes the 8th—penny of all fines, escheats, etc., derived from the sheriff's court. See e.g. *Reg. de Dunferm.* No. 50; *Reg. Mag. Sig.* i. 306.

¹ David Chambers in his *Histoire Abrégée* (1579) states: 'Le connestable est juge ordinaire en toutes plainctes criminelles, faictes dedans deux lieues pres de la cour royale.'

² *Hist. MSS. Com. 5th Rep.* p. 623; *Spald. Club Misc.* vol. ii. p. 226.

³ J. H. Round in *Eng. Hist. Rev.* Apl. 1921.

⁴ The Mercat Cross was a favourite place for the sheriff's court. Clackmannan sheriffdom in 1592, having no tolbooth, held its court at the Mercat Cross, a fact deplored by the sheriff, who petitioned Parliament for a tolbooth (*A.P.* iii. p. 582). Elsewhere churches, churchyards (forbidden by statute, *Frag. Coll.* c. 20; *A.P.* i. p. 752), standing stones, moothills, houses were made temporary courts.

⁵ It is noteworthy that so late as 1511 the Sheriff of Wigtown (Patrick Agnew) and McLellan of Gilston were ordered (by judgment of a Justice Eyre) to be warded in separate castles. The procedure following sentence is peculiar. The prisoners were to obtain within eight days from the Keeper of the Signet 'letters of Reception' which were to be delivered to the constable of the castle within a week thereafter (*Transcripts of Rec. Just. Eyre* in *Reg. House*, iii. 145).

The introduction of the sheriff meant no sudden abrogation of the old Celtic customs; the time-honoured usage of the country was followed by David I. and his royal successors in the rules made for the courts of his sheriffs,⁶ Barons of Regality, and other courts. Brehons⁷ and Toschachs⁸ were not retired but continued in office. As these officials closely affect the sheriff—either as subordinates or associates—merging, in some cases, into sheriffs, some notice of their office is necessary for the proper understanding of the sphere of the Early Sheriff. The Toschach—chief or captain in the Celtic system, had his title altered in the Scoto-Norman period to that of *thane*; ⁹ his rank, indicated by a wergild of 100 cows, was next below an earl's (140 cows),¹⁰ and his consent appears to have been necessary to any deed of the earl's, whose charters contain the formula: 'Militibus et Thainis Concedentibus.'¹ In the early period of the sheriff's career the thane was a steward² with a court of his own,³ Macbeth, thane of Falkland, being described⁴ 'Judex bonus et discretus.'

The courts of the thanes continued to administer justice side by side with the sheriff courts after the introduction of sheriffs in Scotland. In the twelfth, thirteenth and fourteenth centuries thanages were the fiscal units of administration, the equivalent of the later baronies,⁵ and in several instances they seem to coincide with the sheriffdom which is superseding them, the thanages of Aberdeen, Kincardine, Stirling and Scone being

⁶ *Ass. Dav.* xiv. xv. *et passim*; *A.P.* i. p. 320.

⁷ The Briewe (Brehon) of Lewis was in office there in the seventeenth century (*Scot. Hist. Soc.* 2nd ser. vi. vol. xii. p. 272, containing transcript of seventeenth century MS. 'The Ewill Troubles of the Lewes').

⁸ Cf. system of Taoisechs of the ancient Irish (*Annals of the Four Masters*; and O'Curry, *Manners and Customs of the Ancient Irish*, i. ccxlv.). In Wales the Twysawgs were the chief princes (*ibid.*).

⁹ *Antiq. Abdn. & Banff*, i. 549, 564. Finlay, Thane of Glentilt, is alternately termed Finlay Tosschach (*Reg. Moray*, xxviii.). The lands of Dunning . . . appear in early records as a thanedom belonging to the Earls of Strathearn, and the officer who administered them is twice mentioned—once as *Steward* and again as *Thane* (*Hist. MSS. Com.* 3rd Rep. 406). A descendant of the thanes—Alexander Thane—granted several charters from Dunning in the sixteenth century (*ibid.*)

¹⁰ *Reg. Maj.* iv. 55.

¹ *Lib. de Insula Miss.* xxvii.

² *Lib. de Scon.*; Buchanan, *Hist.* book vii. p. 86; *Hist. MSS. Com.* 3rd Rep. 406.

³ *Lib. Sce. Crucis*, pp. 51-52.

⁴ *Reg. de Dunf.* Nos. 1 and 19; *Reg. Prior. St. Andr.* p. 117.

⁵ *Thanage of Fermartyn.* By W. Temple, Aberdeen. 1887.

merged in the respective sheriffdoms of these places. The mention of tithes 'tam thanagiorum quam burgorum' in *Reg. Episc. Abdnis.* i. p. 18, seems to imply that burghs were not included in thanages. In the early times of the sheriff the thane, as steward, accounted to the sheriff for the dues of his thanage.² Where villeins omitted to pay the tithes of the church to the thane, the sheriff was bound to enforce payment.³

Several instances are recorded of a thane being promoted to the office of sheriff,⁴ one of the latest being the Thane of Cawdor who, in 1405, was appointed Sheriff of Nairn by Robert III.⁵ Again, the thane of Rathen is recorded to have been appointed in 1261 Prepositus of Elgin.⁶

The Toshacheadoir, the immediate subordinate officer of the toshach or thane, retained his native title in the era of the sheriff as an alternative for that of 'Serjeand' or 'Mair'; the 'doer' of the toshach became one of the sheriff's officers⁷ and summoned defaulters to the court.⁸ Skene (*De Verb. Significatione*) refers to a grant of this office by David II. in favour of J. Wallace, Armiger, 'quod officium Toshaderich dicitur, vulgo ane mair of fee'; and, as tosheadoir, he is found in Nithsdale before and after A.D. 1440,⁹ as well as in Kintyre in 1554,¹⁰ and in the Lennox country.¹¹ So late as 1685 the name of the office is retained; for in that year the 'mairship or toshderich' of the shires of Argyle and Tarbert reverted to the Crown on the forfeiture of the Earl of Argyle.¹²

Of the 'Lawmen' ('Lögmán') of the Norse settlements in the Western Isles, in Argyle, Bute, Caithness, Orkney and Shetland not much is known. They officiated in Orkney so recently as 1540 when they were superseded by the sheriff, but the old laws as propounded by the lawmen governed both

² *Ex. R.* i. pp. 8, 11, etc.

³ *A.P.* i. p. 91.

⁴ Dufoc or Dufotir, thane of Callander, was *circa* 1147, appointed Sheriff of Stirling (*Reg. de Cambusk.* No. 190).

Thomas Wyseman, a thane, was *circa* 1247, Sheriff of Elgin (*Reg. de Moray*, pp. 34, 113-4, 138, 276).

⁵ *Thanes of Cawdor*, p. 5.

⁶ *Reg. Moray*, p. 138; *Cal. Doc. Scot.* i. No. 2371.

⁷ Sometimes, probably more frequently, an officer of the Justiciar (*Exch. Rolls*, vol. vi. p. 70, where payment to the Toshdorach far exceeds that of Mairs).

⁸ *Reg. Maj.* i. caps. 5 (cl. 3) and 7.

⁹ *R.M.S.* i. App. 2, 1920.

¹⁰ *Hist. MSS. Com.* 4th Rep. 476.

¹¹ *Cartul. de Levenax*, p. 92.

¹² *A.P.* viii. p. 493.

Orkney and Shetland until 1611.⁴ Two instances there are of the descendants of lawmen officiating as coroners⁵ and one as sheriff-depute. In pre-sheriff times he had declared the laws; his assessors, 'Rothismen,'⁶ probably left the name of their meeting place in Rothesay. That the lawmen were of exalted rank may be inferred from the fact that the logman of the Sudreys was son of King Gudred and was in 1098 carried off by Magnus, king of Norway, during one of his raids.¹ The curia of the lawmen, where their parliament or Thing was also held, was on a hill—Logsberg, or Hill of Laws—invariably situated near a stream. Viscount Bryce describes the Logsbergen of Iceland in B.C. 900, mentioning that these were always placed near running water, a convenience for trials by ordeal.² The meeting places of the lawmen in Scotland, some of which are recognisable in Dingwall, Thingwall, Thingwa and Tynwald, had likewise each a stream adjacent. There is dubiety whether or not the Moothills of Alba and Cumbria were used in pre-Norman times as courts. The editors of the Reports of the Ancient Monuments' Commission incline to regard the motes as belonging to the early Norman settlement under David I., by analogy with the motes found in England and France; but the Moothills of Fife, Perth³ (notably the Skait of Crieff), of Dumfries, Kirkcudbright and Wigtown, present features similar to those of the lawmen and were used by sheriffs and barons as courts. These were excavated to a depth of from five to eight feet on a hill; the walls were of earth and stone, with a trench surrounding; and the necessary stream was at hand. There was no roof,

⁴ *Spald. Club Misc.* v. 37.

⁵ Both Lawmen and Dempsters held office in heritage, and in many instances bequeathed to their descendants the name of the office as surname. The Lawmen's descendants are found in Western Scotland in the fifteenth and sixteenth centuries, generally holding the office of coroner, under the names Lawmondson and McLamont (cf. *Hist. MSS. Com. 4th Rep.* 478-9). John of Lawmondson was in 1479 Sheriff-Depute of Argyll [*Acta. Dom. Conc.* p. 34]. The ancient name of Dempster is similarly derived from the dempsters or judices of Angus. The surnames of Mair and Serjeant were probably derived from the offices represented. Tosh, McIntosh were undoubtedly due to the Toisec or Toshach.

In ancient Ireland the Lawmen were chief judges; the Rathmen or Rath were 'advisers' (O'Curry, *Manners and Customs of Ancient Ireland*, vol. i. cclxxvi).

¹ *Orkneyinga Sagas*, p. 70.

² *Studies in Hist. and Jurisp.* vol. i. p. 327.

³ Regarding the record of Barony Court (the oldest extant) on the 'Hund hil' of Longforgrund in 1385, Dr. John Stuart remarked that this hill was one of the Moot hills of early Celtic times (*Hist. MSS. Com. 3rd Rep.* 410).

to which circumstance may be ascribed the expression, 'in plena curia,'⁴ common alike to court records of the thirteenth and twentieth centuries.

The *judices*—Brehon and Dempster—officiated in Alba⁵ and in Cumbria,⁶ and were probably a hereditary class like the Deemsters of the Isle of Man. The Dempster and the Brehon were *judices*, and under that title appear in the Church Cartularies until the fourteenth century. The *judices* of the Frankish Empire, Fustel de Coulanges derives from the Roman Empire 'où il avait designé les gouverneurs des provinces. Il resta usité dans toute la période mérovingienne. Quand nous rencontrons le mot *judex* dans les lois ou dans les textes historiques il ne faut pas croire qu'il s'agisse simplement d'un magistrat de l'ordre judiciaire. . . . Le *judex* est un duc, un comte, un vicarius, ou un centenier, c-à-d. un agent de l'administration.'⁷

The *judices* of Alba and Cumbria present a striking resemblance to the Frankish *judices*. Constantine, Earl of Fife, was, *circa* 1128, 'magnus *judex* in Scotia'; and, with his assistants Dufgal, 'judex senex, justus et venerabilis,' and Meldoinneth 'judex bonus et discretus,' was in request as arbiter and judge in law-suits; and among the great privileges pertaining to his house, he had a code of laws for his province of Fife long after the Scoto-Norman laws obtained elsewhere. Of Oggu and Leysing, *judices* in Cumbria,¹ nothing now is known beyond the fact that they accompanied David I. on his tours of inspection, and their names are found in the deeds of their royal master as witnesses to several of his Foundations: notices that imply a high degree of rank.

The *judices* of Galloway in the thirteenth century are found pronouncing not only legal decisions but declaring what the laws shall be throughout the Province.²

Several of the pre-sheriff *judices* are continued during David's reign as *Judices Regis*; others—like Meldoinneth and Ewayn, of Scone—received appointments as sheriffs.³

⁴ Cf. Pollard, *Evolution of Parliament*, p. 33.

⁵ E.g. Beolin and Keraldus, in the Mearns, *circa* 1222 (*Reg. de Brech.* ii. p. 1).

⁶ Leysing and Oggu, *judices* of David I. in Cumbria (*Reg. Epis. Glas.* No. 1).

⁷ *Instit. Politiq. de l'Ancienne France*, 349-451.

¹ *Reg. Episc. Glas.* No. 1.

² *A.P.* i. p. 378.

³ *Reg. de Dunf.* No. 29; *Reg. Prior. St. Andr.* p. 132.

It is evident that David I., in making so much use of the Celtic officials and in permitting the retention of the old customs, was not so much bent upon a revolution of the legal machinery as upon a better fiscal arrangement. Under the Scoto-Norman economy the kings contrived as far as possible to make the two officials, the thane and the *judex*, into one sheriff. Where the sheriff was not originally either thane or *judex* the king sometimes retained the thane or *judex* as the subordinate of the sheriff.⁴ The thane collected the royal dues, presented them to the sheriff, who then accounted for the revenue to the Chamberlain. If the thane neglected to obtain the legal tithes from the villeins the sheriff was to compel him.⁵ The *judices* who had not obtained appointments as sheriffs sat as Dempsters—their value to a sheriff ignorant of the ancient legal customs being most important.⁶

The development, however, of the country in the rise of *burgs* and the settlement there and in the country generally of Norman immigrants or their descendants necessitated fresh additions to the older laws. To meet these requirements the king issued laws in which, while retaining, where convenient, the '*Assisa Patriae*,' he endeavoured to do justice to all. Here he was probably assisted by the churchmen, whose services are rewarded by certain tithes from escheats of courts being paid to their establishments. It is impossible to ascertain how many ecclesiastics held office as sheriff; one in David's reign at least seems certain—Adam, King's Chaplain at Roxburgh, is almost without doubt Adam the Sheriff of Roxburgh.⁷

The Church had her courts independently of the sheriff; so too had the Barons of Regalities. Both Church and Greater Barons in their Rights of Regality could try cases involving the Four Pleas of the Crown, a privilege denied the sheriff, unless he were given permission by the Justiciar, the sheriff's superior

⁴ The sheriff of Kincardine (*Regd. le Chen.*) was in 1264 in charge of the thanage of Fermartyn (*Ex. R.* i. 21).

⁵ *A.P.* i. p. 91.

⁶ *Holyrood Charters*, No. 1; *Reg. de Dunf.* No. 50; *Reg. Prior. S. Andr.*; *Inchaffray Charters* (Scot. Hist. Soc.).

⁷ Sir Arch. Lawrie's *Early Scottish Charters*, pp. 99-100, 154; later instances are: Ralph, *Clericus et Vicecomes de Scone*, during reign of Alexander II. [*Reg. de Panmure*, ii. No. 153, *Lib. de Scon.* p. 43], and Bernarde [de Linton] Abbot of Arbroath and Sheriff of Forfar tempo Rob. I. [*Lib. de Aberb.*].

judge in civil and criminal causes.⁸ The sheriff's court was superior to the ordinary baron's only. The sheriff could try causes on appeal from the baron, but not from the 'Regalities.'¹ The sheriff, however, had to be reckoned with whenever he held his court every forty days. Thither bishops and earls and barons of the province—as well as the parties to the action—had to go.² Appeal to the king was disallowed except where the sheriff or the bailies had failed. Those attempting to avoid the lower courts by taking their case straight to the king were fined eight cows.³

The respective jurisdictions of Chamberlain, Sheriff, Church, Bailies—and later of Stewarts—resulting frequently in claims of replegiation,⁴ were still further complicated by the functions

⁸ This provision was made by William [*Ass. Will.* xix.] and may not have been observed earlier.

The sheriff was an executive officer of the justiciar, whose advent to the sheriffdom the sheriff had to proclaim forty days beforehand, and on whom he had to attend during the Justice Eyre. Execution of the justiciar's sentence was frequently entrusted to the sheriff. In 1493 the Justiciar of Berwick directed the sheriff to flog a boy (*Transcripts of Rec. of Justice Eyre* in *Reg. Ho.* vol. i. No. 20). There are several cases of the two offices combined in one person—e.g. Argyle and Orkney at certain periods.

¹ The origin of the Regality is found in the *Seigneuries* of France where, as in Scotland, the seigneurs enjoyed along with considerable territory '*des droits regaliens*' (Luchaire, *Manuel des Institutions françaises*, p. 235)—rights which conferred on their lords privileges as abundant in the territory as those enjoyed by the king in his own realm. The grant of a Barony of Regality in Scotland conferred on the donee the fees, fines, customs, Advowson of Churches, *cum itineribus et curiis justiciarie, camerarie, et vicecomitatus ac ipsorum itinerum et curiarum finibus, amerciamentis, exitibus et eschaetis* (*Reg. de Moray*, No. 194). Sometimes the grant included the privilege of a Mint (cf. art. by Dr. George Macdonald in *Proc. Soc. Antiq. Scot.*). The Regalities were not under the jurisdiction of the sheriff, but of the Baron of the Regality. According to Clerk and Scrope (*Hist. of Exchequer in Scotland*), the Lord of Regality could not officiate as judge, but had to delegate the duty to a Bailie. The right to deal with cases of the Four Pleas of the Crown was taken from the lords of Regalities before 1559 (*Discours Particulier*, p. 22). Sir Geo. Mackenzie, however, observes that the question was not clearly settled (*Laws and Customs*, p. 404).

² *Ass. Dav.* xxv.

³ *Ass. Dav.* xxiv.

⁴ The potent threat of excommunication was sometimes made by the mediaeval Church instead of the ordinary claim to repledge being adopted. The Abbot of Paisley, e.g. in 1294, threatened the Earl of Lennox, his Stewarts and Bailies, with excommunication if the action brought against the Abbey were not dropped from the Earl's Court (*Reg. de Passelet*, p. 201-204).

In a dispute of 1383, which was compromised, the vassals of the Earl of Moray complained that the Bishop of Moray had threatened them with the direful

of burgh *prepositi*⁵ or *Ballivi*, who were subordinate royal officers.

The *Prepositus* is defined in *Fleta*, bk. 2, cap. 76, as 'Is qui sub senescallo vel ballivo, res dominicas aut regias curat in villis vel pagis et agriculturæ pecudibus, pasturæ et eiusmodi invigilat.' This definition corresponds exactly with the duties of the Scottish *prepositus* in twelfth to fourteenth century sheriffdoms. The privileges accorded by William the Lion to royal burghs did not include that of electing the *prepositi*, *ballivi* or *mairs*. So late as 1327 Adam Pylche is designed 'Prepositus et Sub-vicecomes de Inverness';¹ and in 1375 Robert II.—not the community—granted to John Wynd the office of Mair of Aberdeen.²

The royal *prepositus*, who thus relieved the sheriff of the duties of collecting cess, giving sasine, etc., in the burgh, accounted for these to the sheriff, who returned the amounts to the Exchequer until 1327, when the *prepositi* were made responsible.³ All this intervention of a royal official in their affairs irritated the royal burghs, who set about obtaining the privilege of electing their own *prepositus* and of having him constituted 'Sheriff within the Burgh.' Perth in 1394 was the earliest to obtain this

punishment of excommunication—a charge denied by the Bishop (*Reg. de Moray*, No. 169).

Churchmen contented themselves by resorting to the forms required for repledging from one court to another. In the Sheriff Court of Banff, 26th May, 1364, 'certain reverend fathers compeared in a case affecting three serfs. The mair having shown the Brief of Replegiation to the sheriff, the Assize declared, by the dempster, that the serfs were liegemen of the reverend fathers' (*Reg. de Moravia*, No. 148).

A claim of replegiation in 1509 by the Bailie of Cunningham against the Sheriff of Ayr was decided by the Privy Council against the sheriff (*Hist. MSS. Com. Eglington MSS.* p. 21).

Cases between ecclesiastics and laymen as to the ownership of serfs were of frequent occurrence in Sheriff Courts. In a Fifeshire dispute of 1352 the sheriff decided in favour of the Church party (*Reg. de Dunf.* No. 379).

⁵ The origin of the *Prepositus* or *Prévôt* in France, Luchaire (*Instit. Monarch.*, 540) ascribes to the Capets who, in turn, had borrowed the idea from ecclesiastical establishments whose *Prévôts* had the care of property far removed from the Abbey. Glasson (*Hist. du Droit*, vi. 310) points out that the *Bailli* was not only a judge of appeal from the *Prévôt* but also that official's superior in matters of administration and discipline; he it was who appointed the *Prévôt* and took his oath.

¹ *Exch. R.* i. 59; *R.M.S.* i. App. 2, 711.

² *R.M.S.* i. 626.

³ *Exch. R.* i. p. 59.

right.¹ Aberdeen had it in 1454;² Edinburgh in 1482;³ Haddington in 1542;⁴ Lanark in 1540;⁵ Dundee in 1641⁶—the privileges of which were to lead to disputes between the burghs and the constables, as well as with the sheriffs.

Through all these conflicting jurisdictions successive kings and parliaments continue to apportion certain rights and duties, always looking to the sheriff as their principal fiscal, military, and executive officer. William the Lion in the course of his long reign made many improvements on the judicial system introduced by David I. Besides renewing the provision for a session of the sheriff's court every forty days, in which barons and bishops of the sheriffdom had to be present, William ordered the attendance there of the stewards of bishops, abbots and earls.⁷ Summonses had to bear upon them the charge against the defender.⁸ The sheriff had to be summoned to every court held by Church⁹ and Baron, but, that done, his absence did not invalidate the proceedings except in cases of 'life and limb.' William required the sheriff to be in attendance at court whenever the king visited the sheriffdom, and to remain in attendance, unless permission to leave was expressly granted.¹⁰ The sheriff could deal with Pleas of the Crown when the Justiciar gave permission.¹¹ The sheriff was further enjoined to see that justice was done to poor as well as rich, 'especially kirkmen and husbandmen.'¹² An unsuccessful litigant impugning the judgment of the court had, if argument failed, Ordeal of Battle.¹³

C. A. MALCOLM.

¹ *R.M.S.* 1593-1608, No. 1098.

² [*Charters of Edinb.* p. 157.]

³ *Lanark Records*, p. 394.

⁴ *Ass. Will.* xix.

⁵ *Hist. MSS.* 5th R. 630.

⁶ Wallace-James, *Charters*.

⁷ *Charters of Dundee*, p. 66.

⁸ *Ibid.* xxx.

⁹ The Province of Fife, under the jurisdiction of the Earl, sent its 'judex provinciae' to the court of the Abbot of Dunfermline to see that law and justice were duly observed (*A.P.* i. p. 85).

¹⁰ *Ass. Will.* xxvi.

¹¹ *Ibid.* xix.

¹² *Ibid.* xlii.

¹³ *Reg. Maj. A.P.* i. 628. Sir Philip Hamilton Grierson has noted similar provisions in ancient Germany and in the *Assizes de Jerusalem*. In the latter 'whoever falsified the judgment of the Court was bound to do battle with all its members. If he vanquished them all in a single day, they were hanged; and he was hanged if he failed so to do' (*Scot. Hist. Rev.* xv. 215).

(To be continued)

Reviews of Books

JOHNSONIAN GLEANINGS. By Aleyn Lyell Reade. Part III. *The Doctor's Boyhood.* Privately printed for the Author at the Arden Press, Stamford Street, London, 1922.

'THE art of biography is the gift of the few, but the science of biography can be advanced by anyone schooled to the pursuit of truth.' So says Mr. Aleyn Lyell Reade in the preface to this remarkable volume, which at once takes its place among the greatest pieces of 'scientific biography' that have appeared in our time, and takes it confidently. There could not be a better example of 'how much can be achieved by the introduction of determined and orderly method into the province of biographical research' than this new account of the early years of Samuel Johnson. We have been apt to suppose that what we did not know about him was not likely to be discovered. We now begin to think that there need be no limit to what we yet may learn.

Mr. Reade's published work on Johnson dates from 1906, when he brought out *The Reades of Blackwood Hill and Doctor Johnson's Ancestry*, a large quarto volume containing a surprising amount of new information about Johnson's family and early friends. Then followed two volumes of *Johnsonian Gleanings*, 1909 and 1912, the first consisting of 'Notes on Dr. Johnson's Ancestors and Connexions,' and the second dealing with Francis Barber, Johnson's negro servant. In the present volume on *The Doctor's Boyhood*, Mr. Reade has embodied much of the material that he had already published, but he has used it to supplement, or confirm, or confute everything, it would appear, that has ever been written about the first twenty-one years of Johnson's life. Eight chapters, extending to 181 pages, cover the same ground as about 20 pages of Boswell's life in Birkbeck Hill's edition. Scientific biography of this kind is an acquired taste. The ordinary reader is likely to be disturbed by the multiplicity of details, interesting as these often are, and by the absence of a strong thread in the narrative. But Mr. Reade marshals his facts skilfully, and he writes simply and with a precision that gives confidence, and with a zest that is tempered by a sense of humour. This is a book only for the Johnsonian, and no thorough Johnsonian can neglect to place it on his shelves as a supplement to his Boswell. The greatest of our biographies, the crowning instance of the *art* of biography, gives us Johnson in his habit as he lived. Mr. Reade, who makes no claims above the *science* of biography, is mainly concerned in this volume with the demonstrable facts of Johnson's boyhood and its setting. He hopes that this 'biographical

exercise,' as he modestly calls it, 'will be of interest for the actual light it throws upon Johnson's early life, its formative circumstances and surroundings.' It throws a very strong light, without modifying in any essential point the impression derived from the older pictures. But Mr. Reade is not by any means indifferent to questions of character. In addition to telling us all that is known about Johnson's father and mother, for instance, he lets us see the kind of people that they were.

'Mrs. Johnson was as blameless a woman as her husband was a man. But she was by no means the ideal wife for him. Quite unable to share his literary tastes, and lacking a large outlook on life, she made matters worse by ever letting it be known that she had 'married beneath her,' and poor Michael seems to have been too proud to argue the point with her. His lack of family was in her eyes only less to be deplored than his lack of success in business. Yet she did nothing to help or stimulate him, but merely acted the part of an irritant. . . . However much she lacked those elements of greatness which are often attributed to the mothers of distinguished men, there can be no question that she was devoted to her children and won their complete affection. . . . The Doctor clearly idealized his mother in later life, and was anxious by every form of recognition of her memory to atone for those long years during which he failed to visit her.'

This is new matter, and a good example of what Mr. Reade can do in the way of portraiture ; and for every statement in it, as throughout the whole volume, he is able to cite chapter and verse.

The volume has the incidental interest of illustrating Boswell's methods. Mr. Reade is the first to make use of the note-book now in the possession of Mr. R. B. Adam of Buffalo, which was reproduced in facsimile in 1919, and, it may be added, has since been printed in full in the *Catalogue of the Johnsonian Collection of R. B. Adam*, 1921. He brings together the note as Boswell jotted it down roughly, and the corresponding passage in the *Life*. As a rule the note is the more valuable to the researcher, as it sometimes contains details that were omitted in print ; and sometimes we see how the desire for a more finished style modifies the effect. The only serious alteration is in the version of the lines which Johnson is said to have made when he was three years old :

Under this stone lyes Mr Duck

Whom Samuel Johnston trode on, etc.

But Boswell has long been known to have had a different standard of textual accuracy from what is now in fashion. The note-book tells us that Johnson as a boy 'used to have oatmeal porridge for breakfast,' but what we read in the *Life* is that Boswell found oats to be much used as the food of the people in Lichfield, and, in the *Journal of a Tour to the Hebrides*, that Johnson owned to having been fond of dry oatmeal in his youth. Johnson may have lost his taste for porridge, but when we ask what tempted him to write his famous definition in the *Dictionary*, the answer must be that the learned lexicographer liked on occasion to tease, and that five of the six amanuenses who helped him were Scots. Mr. Reade finds nothing to substantiate Sir Walter Scott's statement that 'Johnson's grand-

father (like the grandsire of Rare Ben) was actually an Annandale Johnstone.' The 'Robert Johnson of the parish of Lochmaben,' who was buried at Lichfield in 1675, was not of the same family, but a packman who was touring England with his wares.

Mr. Reade promises us another volume dealing with the period from 1728, when Johnson went to Oxford, to about 1740, when he was beginning to make his way in London. We await it with great expectations. Perhaps yet another volume will at last tell us what Johnson was doing in 1745.

Has Mr. Reade seen the letters by Gilbert Walmsley presented a few years ago to the Bodleian Library? Or has he found in them nothing to his purpose?

D. NICHOL SMITH.

DRYBURGH ABBEY IN THE LIGHT OF ITS HISTORICAL AND ECCLESIASTICAL SETTING. By the Rev. D. G. Manuel, B.D. Pp. 375. With 14 illustrations. 8vo. Edinburgh: William Blackwood & Sons. 1922. 21s. net.

THE limits of this work are clearly indicated on the title page, and within these limits it is a very well written and thorough piece of work. It is to be regretted that the accomplished author did not live to see its publication, and to carry out a certain amount of revision which he had in his mind; but even without that it is certain to appeal to a wide circle of readers. It is introduced by a short and appreciative paper from the pen of Professor Cooper, who points out very clearly the line taken by the author in the preparation of his book. Neither architectural nor archæological detail need be looked for; it is from the spiritual and historical side that the subject is approached. There are no doubt several photographs of the ruins, but no reference is made to them in the text, nor is there even a plan of the Abbey given, which is an unfortunate omission.

Both the ecclesiastical and secular history of the Abbey is related in detail not only from the time of its founding by Hugh de Morville in the twelfth century but from centuries before that, when the place, though not an Abbey, was a centre of religious influence under the direction of S. Modan. Who Modan was or whence he came is a matter on which there are varying opinions. Principal Story held that Roseneath was his mission centre in the sixth century, but Dr. W. F. Skene places the saint two hundred years later, and thinks that he began his work at Dryburgh. The case for both sides is set forth at length, but it has really little practical bearing on the history of the Abbey, which was actually founded in 1150. By that time the spark of light which had been kindled by S. Modan was very dim, and it required the organising power of the Roman Church to rekindle it. Following the pious custom of the time, and prompted, as our author thinks, by deep personal religious feeling, Hugh de Morville, a Cumberland man, and a favourite of that saintly King David I., who made him Constable of Scotland, founded the Abbey in the year above mentioned, and within the next two years he delivered it to the care of a body of Premonstratentian Canons, one of the most influential and eminent Orders

of the time. It was at first a very strict Order, but, like other communities of the sort, it did not for very long keep up the extremely high standard it set itself at its inception. Those White Canons, as they were called from their dress, proved themselves admirable pioneers of the religious life at Dryburgh, and the author does full justice to their zeal and devotion. In one matter specially they showed great good sense. Besides the regular Canons there was another lay Order of *fratres et sorores ad succurrendum*, corresponding very much to the later founded 'tertiaries' of S. Francis. Not bound by the strictest monastic vows, they devoted themselves to duties of the most practical and beneficent kind.

One of the most curious points which our author makes in connection with these early Canons is, that, in his opinion, the rule of celibacy was not enforced in the Order. But had he had leisure to revise the book, it is probable he would have modified the opinion he expresses. He quotes two charters, both given in the original Latin in the *Liber de Dryburgh*, in which a certain Robert de Veteriponte grants to the church of S. Mary of Dryburgh '*et fratribus meis canonicis ibidem Deo servientibus vel servituris*' the right of patronage of the church of S. Michael of Little Sorbie, '*pro salute anime mee at uxoris mee*,' etc. This charter was confirmed by another executed by Alan, Robert's father, in which he uses similar expressions. Mr. Manuel thinks that both father and son were Canons of the Abbey, otherwise they would not have used the expression *fratribus meis canonicis*, and as the son refers to his wife and the father to his son, both must have been married. But surely it is more likely that both father and son were merely lay members of the community—*fratres ad succurrendum* in fact—and that they were not bound by the vow of celibacy which was incumbent on the Canons regular. The words in the charter can hardly be translated 'my brother canons,' but rather 'my brethren the canons now or in future serving God,' etc. The word brethren connotes not so much a carnal relationship as a spiritual bond, arising from the fact that they were all members of the same ecclesiastical brotherhood, and therefore brothers in Christ. Besides, while the grantee might have referred to actual brothers serving at that time as Canons, he could not possibly have granted the charter to brothers who were only in future to serve in the Abbey.

About the personal life of these Canons within their precincts there is a very interesting chapter, and after that the history of the Abbey is resumed and given in detail from the date of the installation of Abbot Roger in 1152 down to the time when in 1581 three old monks were the sole representatives of the erstwhile flourishing religious community, and, what is a very distinguishing feature of the work, its relation to the civil history of Scotland through all that period is intelligently set forth.

After the Abbots came the Commendators, some of them eminent and powerful men, both lay and cleric. In time the Commendatorship became practically a heritage of the Mar family, and in 1606 it was merged in the Lordship of Cardross, and all trace of its ecclesiastical origin disappeared. In 1582 the Abbey and its lands, which then pertained to Lord Cardross, were sold to Sir Patrick Scott, younger of Ancrum. In 1700 it passed to

the Haliburtons, of whose family it will be remembered Sir Walter Scott's grandmother belonged. They did not hold it long, however, and after being owned for a short time by the Tods of Drygrange it was purchased by the eccentric Earl of Buchan, and it remained in the possession of the Erskines till its recent sale to the first Lord Glenconner. His generous gift to the nation of the beautiful ruins of the Abbey is the last but not the least satisfactory phase in the chequered career of this historic shrine.

J. BALFOUR PAUL.

SCOTTISH COLONIAL SCHEMES, 1620-86. By George Pratt Insh, M.A., D.Litt. Pp. xii, 208. With 4 illustrations. 8vo. Glasgow : MacLehose, Jackson & Co. 1922. 12s. 6d.

THE study of Colonial history has, even in Colonial Universities, not yet received that attention which a subject of such importance in the life of a great empire demands. Dr. Insh shows the great storehouse of material of absorbing interest which remains to be explored in British and in Colonial archives, and his volume gives a great impetus to similar research. Apart from its general significance, this account of early Scottish Colonial Schemes makes its peculiar appeal to all Scots, but particularly to the Scottish Colonial, the inheritor of that spirit of adventure and romance which animated the French Scots Guards and the Dutch Scots Brigade, the pioneers of Nova Scotia, Carolina and Darien.

Until the Union of 1707 Scottish Colonial enterprise achieved little. The national tendencies of the Scot did not make for success in this field. Tradition led the Scottish adventurer rather to the wars of the Continent than to the sphere of maritime discovery and colonial endeavour; the religious persecution which sent the Puritans of England across the Atlantic inspired the Covenanter of Scotland to resist the oppressor with all the confidence of the man who believes that right must triumph. The few Presbyterians who sought refuge in exile turned instinctively to the Scottish trade routes, and these led not across the Atlantic to the plantations but across the North Sea to Holland.

The name of Nova Scotia survives to remind us of the earliest of Scottish colonial ventures of importance, the colony which Sir William Alexander, poet, diplomatist and man of affairs, sought to found in the domain granted to him by charter in 1621. Even the offer of Nova Scotia baronetcies did not induce the hardheaded Scots lairds to finance Alexander's scheme and the project languished till 1629, when the first settlement was effected, only to be abandoned in 1632 upon the termination of hostilities between England and France. Lord Ochiltree's settlement of 1629 on the Cape Breton coast had a still shorter existence and disappeared in a few months before a French raiding force, the commander of which built, almost on the site of the Scottish settlement, a small fort which ultimately became the famous Louisburg, the key to the St. Lawrence.

More than half-a-century elapsed before Scottish colonists, in organised enterprise, again put fortune to the test in the Presbyterian colony of Stuart's Town in South Carolina (which in 1686 was completely destroyed

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by a Spanish raiding force), and in the settlement of Scottish Quakers in East Jersey, which enjoyed considerable prosperity till 1688, when it was surrendered to the Crown and, along with New York and West Jersey, was united to New England.

Scotland had passed from the domination of theology to that of commerce ; Scottish merchants had become keenly alive to the importance of overseas plantations both as places of trade and of settlement. Their commercial ambition culminated in the foundation of the Company of Scotland trading to Africa and the Indies and in the tragedy of Darien.

The record of Scottish colonizing effort in the seventeenth century is one of feeble attempt and ultimate failure. Dr. Insh has set forth his material in such fashion as to make the failure stand in striking contrast to the solid achievement of England in the same period. His work throws an interesting sidelight from the Scottish side on the story of British colonial expansion.

JOHN RAWSON ELDER.

Dunedin.

IRELAND : FROM THE EARLIEST TIMES TO THE PRESENT DAY. By Robert Dunlop, M.A. Pp. 224. Crown 8vo. Oxford : University Press. 1922. 7s. 6d.

It is no slight achievement to have traced within the compass of some two hundred pages the many vicissitudes of Irish history and to have presented not only a narrative of the outstanding events of that history but also some indication of the significance of the leading factors—geographical, ethnological, social, and economic—that have influenced the evolution of the Irish nation. Judged, however, by its influence on national thought and feeling, the literary aspect of the Irish Renaissance merits a less perfunctory treatment than that accorded to it on page 192.

Interesting corroboration of Mr. Dunlop's conjectures concerning the extensiveness of the scale on which the transportation of Irishmen to the West Indies was carried on during the Cromwellian period is to be found in the correspondence of Lord William Willoughby, who, in 1666, succeeded his brother as Governor of Barbados. 'We have more than a good many Irish amongst us,' wrote Willoughby, on 26th July, 1667, to a Scottish nobleman, 'therefore I am for the down right Scott who I am certain will fight without a crucifix about his neck.'¹

G. P. INSH.

A HISTORY OF ENGLISH LAW. Vol. I. By W. S. Holdsworth, K.C., D.C.L. Pp. xlv, 706. Demy 8vo. London: Methuen & Co. 1922. 25s.

ALTHOUGH this, the first part of a History in seven volumes of the Law of England, is described as a third edition, it is completely rewritten and is, in all but name, a new book. The Vinerian Professor of English Law in the University of Oxford now lays before us the fruits of twenty years'

¹ British Museum, Stowe MSS. 755 f. 19.

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labour. The present volume deals with the History of the Judicial System in England.

The development of the judicial system is peculiarly well adapted as a general introduction to the history of the English law itself. The legal system of England has always maintained its connexion with the courts more closely than any other. This is attributed by Professor Holdsworth, first, to the fact that its different component parts have been developed at different periods in many different sets of courts ; and, secondly, to the fact that the main body of English legal doctrine has been and is still being made by means of the decisions of the courts. Beginning then with the origins of the courts as far as they can be elucidated from the confused state of legal administration before the Norman Conquest, he proceeds to consider the rise of the new courts, and with great perspicuity traces the different forms which they assumed in their progress to the well-adjusted whole in which they are now comprised. He deals at length with the courts of common law and their jurisdiction, and then gives in turn the history of the House of Lords, the Court of Chancery, the Privy Council, and the special courts which administered the Law Merchant, Ecclesiastical Law, etc. His description of the rise of the jury system is particularly full and valuable. He concludes with a review of the very necessary reconstruction effected in the judicial system by the Judicature Acts of the seventies.

The book is a monument of learning, but the reader's interest is never buried beneath the monument ; the author's style is throughout brisk and vigorous. The narrative is here and there enlivened by apt judicial anecdote.

It is perhaps an overstatement to say on p. 644 that had Lord Selborne's Acts as originally passed become law 'the appellate jurisdiction of the House of Lords would have disappeared.' The House of Lords and Privy Council were still to retain jurisdiction in ecclesiastical cases and such as originated in Scotland, Ireland, or the colonies or dependencies of the Crown.

This is no mere text-book of law. It is a mine of information for the historian or indeed for anyone who is concerned with the development of our national life. It goes far to demonstrate, as the author hopes the completed work will do, 'the essential incompleteness of English histories in which no account is taken of the legal point of view.'

T. B. SIMPSON.

STATUTES AND THEIR INTERPRETATION IN THE FOURTEENTH CENTURY.

By Theodore F. T. Plucknett (Cambridge Studies in English Legal History. Edited by Harold Dexter Hazeltine, Litt. D.). Pp. xlv, 200. 8vo. Cambridge : University Press. 1922. 20s.

THIS little book achieves with success and thoroughness the task it set out to perform—namely, to expound the principles (or perhaps rather the practice—not always founded on principles) followed by the King's Judges during the first half of the fourteenth century in the interpretation of Statutes. To speak of canons of interpretation at that date would be mis-

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leading, for no fixed rules were acknowledged as universally applicable, and the best minds of bench and bar allowed themselves wide latitude, moving freely in one direction or another as circumstances seemed to justify or require. Much light is thrown by Mr. Plucknett, incidentally in the course of his main investigations, upon abstract problems of great interest such as the indifference of fourteenth-century thought to the purely constitutional aspects of problems that were fated to become burning questions within the next two centuries ; the meaning attached to the conception of fundamental laws and the relations of the royal prerogative thereto, the immutable nature generally attributed at that epoch to the common law, and the absorption of most of the provisions of Magna Carta into the body of that common law.

All this, forming the substance of his original task, Mr. Plucknett accomplishes with ability and varied learning ; and his results are presented to the reader in a well-arranged and interesting form. But he does more than this, for his two hundred pages are a storehouse of facts bearing upon every phase of litigation and legal development in his chosen half-century and indeed on almost every phase of social and economic life in England at that date. An excellent index makes easy reference possible to this mass of useful and varied material.

The volume forms a valuable addition to the series of Cambridge Studies in English Legal History appearing under the competent editorship of Professor Hazeltine. It is fitting that the researches of so promising a band of scholars of a younger generation, all of whom owe much, directly or indirectly, to the inspiration of the late Professor Maitland's genius, should be issued as a Cambridge series and under the editorship of Maitland's able successor in his own Downing Chair of the Laws of England in Maitland's own University.

WM. S. McKECHNIE.

LES PÈLERINAGES EXPIATOIRES ET JUDICIAIRES DANS LE DROIT COMMUNAL DE LA BELGIQUE AU MOYEN AGE. By E. Van Cauwenbergh. Pp. 244. Louvain : University Press. 1922.

THIS important study treats of what is largely an untilled field. Readers of the leading treatises on medieval customary law are familiar with the conception that absence on pilgrimage, as on a crusade, conferred on the absent pilgrim or crusader certain legal 'exceptions' which could be pleaded against the operation of prescription. The *exceptio crucesignatorum*, e.g., preserved to the crusader his right to the exercise of the *retrait lignages*. The pilgrimage or crusade is considered as an experience which is accompanied with a measure of legal protection. M. Van Cauwenbergh treats the subject from the point of view of criminal law, and, in doing so, outlines in an interesting manner the main features of criminal process in the customary law of the burghal communities of the Low Countries. In his *Introduction* he indicates the influence of Canon Law in substituting banishment for the death penalty, and deals with the regulations which followed to restrain the depredations of bands of penal exiles.

The chapters which follow are devoted to (1) the general character of these pilgrimages ; (2) the crimes for which they were imposed ; (3) the

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general procedure followed ; (4) the procedure in the communal courts ; (5) the places of pilgrimage ; (6) the formalities in the execution of a pilgrimage and the early substitution of a pecuniary penalty therefor ; and (7) the condemnation to pilgrimages by the tribunal of the Rector of the University of Louvain in the fourteenth century. The Appendices furnish a selection of typical documents. It is interesting to note that the pilgrimage penalty or its financial equivalent was imposed, not only in the interests of the public authorities, but also for behoof of the relatives of the injured person, *peine légale et satisfaction à partie*. Further, the pilgrimage penalty or its financial equivalent was imposed sometimes as the result of an amicable compromise between the transgressor and the victim, and at other times it followed as the verdict in a regular criminal process. In addition, at Liège, there was the special and summary remedy known as the 'voguement de forche.'

'Saint-André en Ecosse' was a place of pilgrimage for delinquents in 'Gand, Alost, Audenarde, Termonde, Ypres, Lierre, Bruges, Anvers, and Courtrai' ; names which recall more recent pilgrims and more protracted pilgrimages ! The early Scottish legislation regarding the free ferrying of pilgrims at Inverkeithing may have some connection with these penal exiles, and to the same source may perhaps be attributed the evidences of Flemish dwellers in St. Andrews and Berwick to be found in the Registers of some of the Scottish Religious houses.

In an appendix M. Van Cauwenbergh prints some of the tables showing the redemption prices in money of the pilgrimage penalty. The following may be noted :

'Tarif d'Audenarde de 1338
Te Sente Andries in Scotland op VIII. lib. par.
Tarif de Gand Te Sente Andries in Scotlant L 10
Te Sente Jans te Beverlay L 5
Te Sente Thomaes van Erfoerde L 6
Tarif d'Alost T'Sent Andries in Scotland ELC X L
Tarif de Termonde Tsente Andries in Scotlant X L
Tonser Vrouwen te Lincole VI L
Tsente Thomaes te Erforde VI L
Tsent Jans te Beverlay V L'

Some interesting documents on the subject of judicial pilgrimages are to be found in Espinas, *La Vie Urbani de Douai* (Paris 1913), iv. 288, 357, 367, 482, 495, 499, 533, 564, 598, 610, 753.

DAVID BAIRD SMITH.

ARABIA. By D. G. Hogarth. Pp. viii, 139. With map. Crown 8vo. Oxford : Clarendon Press. 1922. 7s. 6d.

THIS volume is intended chiefly for those whose interest in the subject has been stirred by the circumstances and sequel of the Great War. It supplies such information as is likely to be required by readers who wish to understand the political condition of modern Arabia and its relation to its ancient history. The story of the rise of Islam is, therefore, told once again with considerable fulness. Half the volume is given to an account

of 'the times of Ignorance,' the life of Mohammed and the reigns of the four caliphs who immediately succeeded him. The long period from 660 A.D. to the triumph of the Ottoman Turks in 1516 A.D. is dealt with briefly, and the concluding section treats, in four chapters, of Arabia in the Turkish period and during the Great War. This third portion is the distinctive part of the book. It contains information not easily accessible to the general reader, and is made valuable by Professor Hogarth's well-informed account of recent events.

The limited extent of the Turkish dominion in Arabia, at any time, and the disunity of the Arabian tribes and states are important facts clearly placed before the reader. The relations of the British Government to Aden, Mascat, Bahrain, Oman and Kuwait in the nineteenth century are duly noticed. Full attention is paid to the history of the sherifs of Mecca, while, at the same time, the independence and greatness of the house of Rashid, the rulers of Hail (Shammar), and of the house of Saud, the rulers of Riadh, are made plain. The military operations of the Great War are very slightly touched upon, but the political attitude of all the great chiefs is indicated. A fuller statement regarding the action of Saud ibn Rashid of Hail might easily have been supplied, and its omission is rather a blemish in the concluding chapter. The personal name of this ruler (Saud) is never given, and, unfortunately, it is the same as the patronymic of his rival, Abd al-Aziz ibn Saud, emir of Riadh.

The opening chapters, on the rise of Islam, are very readable and are noticeably marked by individuality of treatment. The account of the manner in which the way was prepared for Islam in the sixth century is suggestive and illuminating. The view taken of the great prophet himself may be judged to be unduly disparaging at some points.

Readers to whom the field is new may find the frequent allusiveness of the writer puzzling, and his vocabulary is sometimes unduly scholastic. 'Xenelastic' (p. 100) is not to be found in the *New English Dictionary*, although Grote's 'xenelasy' supplies a parallel.

The book has no rival in English, and deserves a grateful reception both from students and from the general reader. WILLIAM B. STEVENSON.

THE ARMS OF NOVA SCOTIA. By John A. Stewart, F.S.A. Scot., Convener of the Heraldry Committee, the Saint Andrew Society of Glasgow. Pp. 46. 16mo. Glasgow. 1921.

THE primary interest of Mr. Stewart's booklet is, as its title imports, heraldic; but it has a deeper interest as an exposure of a case of gratuitous and perhaps not entirely unconscious interference by a home department of Government with the symbols of a colonial history—a history which, from an imperial point of view, is of an exceptionable character.

The colony of New Scotland or Nova Scotia was inaugurated by a royal charter in favour of a Scottish subject while Scotland was still a separate kingdom. The charter was granted by James VI. in 1621, and the coat of arms which was assigned to the new country was the national arms of Scotland with, for difference, their metal and colour transposed (*i.e.* a blue

saltire cross on a silver field) with, in the centre, a shield of the Royal Arms of Scotland (*i.e.* the red lion and double tressure on a field of gold). More princely and appropriate ensigns armorial for a Scottish colony founded by a Scottish king, and named Nova Scotia, cannot be imagined. These arms were used by Nova Scotia without deviation or dispute till the year 1868. The Dominion of Canada had been created in the previous year, and Nova Scotia had been included, with Ontario, Quebec and New Brunswick, as one of its four great component parts. A seal was now devised, at the instance of the Colonial Office, for the Dominion, in which ensigns armorial for each of these four countries appeared. According to ordinary rules Nova Scotia would have been represented on the seal by the authorized arms which it used and was known by. But the procedure adopted by the Colonial Office on the occasion was peculiar; its conduct deserves a more detailed investigation than is possible in the present notice. For 'the greater honour and distinction' of Nova Scotia it 'inflicted' on it—to borrow an expression of an English judge—a coat of arms consisting of three thistles, and a salmon between them on a fess (*or*, on a fess wavy *azure*, between three thistles *proper*, a salmon naiant *argent*). Here there was no allusion to the old coat of the country; and how far the honour and distinction of any country could be augmented by the exchange from such an old coat to such a new one does not appear.

Since the publication of the book which is before us a report has appeared in the newspapers of an occasion which is of interest far beyond the territorial limits of Nova Scotia—namely, the unveiling of a tablet erected in commemoration of the three hundredth anniversary of the granting to Nova Scotia of the royal charter of King James VI. In speaking of that king, the Hon. George H. Murray, the Premier, alluded significantly to the question of the arms. His words were: 'To him we owe nothing but gratitude, not merely for our name and our splendid historic coat of arms, the interrupted use of which we intend to resume, but for his excellent and far-seeing designs' (*Glasgow Herald*, 25th August, 1922).

Mr. Stewart's informative and useful pamphlet, published under the auspices of the Saint Andrew Society of Glasgow, is very properly dedicated 'To the Historical Societies of Nova Scotia,' and there is no appearance of its being addressed to unappreciative ears.

He deals with the question he treats of historically as well as systematically; treats of details—supporters, crest motto, etc.—as well as with the arms in general, and illustrates his argument with pictorial representations—a round dozen or more. We think the version of the coat of arms without the crown, as on pp. 40-4, more accurate than that on page 6.

J. H. STEVENSON.

NORTHUMBERLAND PLEAS. From the Curia Regis and Assize Rolls, 1198-1272. Pp. xxxvi, 379. 8vo. Printed for the Newcastle-upon-Tyne Records Committee by the Northumberland Press, Newcastle-upon-Tyne, 1922.

THIS record of cases heard before the courts at Westminster, relating to Northumberland in particular, and the North of England, constitutes a

valuable and welcome addition to the historical data of the county. It affords ample evidence of the social conditions prevailing in these regions during the troublous years at the end of the reign of Richard I. and that of John, and during the more settled state during the long reign of Henry III. The Editor is a master of medieval law.

The body of the book consists of nine hundred and seven pleas or cases, presented in a translated form and covering the period from Easter, 1198, to the Feast of St. John, 1272. Many important people of the period appear, such as the Prince-Bishop of Durham, the Priors of Durham and Tynemouth and the Abbots of St. Albans, Kelso and St. Mary's York; amongst the laity such names as Umfravill, Boelbec and de Lasci.

A lurid light is thrown on the result of the quarrel between Henry I. and the Bishop of Durham when the king, about 1133, had granted to the see of Carlisle the important churches of Newcastle, Newburn, Corbridge and Warkworth. John took these advowsons into his own hands, and left the see of Carlisle vacant for some years.

An interesting case introduces us to the mercantile life of Newcastle when John of Santiago and other Spanish merchants, who had shipped a large and varied cargo of cloths and other goods gathered in midland Lincolnshire and Yorkshire towns such as Stamford, Beverley, York and Northampton, were set upon by English pirates off Blakeney on the Norfolk coast. Their captors conveyed them to the Bishop of Durham's island, Holy Island, where they fled to the church and deposited their goods. They were followed by the pirates' captain, who seized their goods. The king willed that full restitution be made to the merchants and that the sheriff return them their goods under pain of imprisonment.

In 1220 the conditions pertaining to the Tyne bridge are disclosed, when the burgesses of Newcastle and the Bishop of Durham appear more than once at variance. The extent of the ownership in the bridge by the two parties had always been a burning question. The Bishop charges the burgesses with having raised a brattice upon the bridge and put a gate across it, which the Bishop said were raised upon his lands; and that six-sevenths of the water of the Tyne were within the brattice and therefore within the town of Newcastle-upon-Tyne; and that under the brattice there was a swing bridge. When the plea came to an issue the Bishop did not appear, and the sheriff obtained a precept to distrain upon him or have his body in the quindine of St. John the Baptist.

There is an exhaustive and instructive introduction as well as a table of Saints' days and movable feasts; the index is full, and very carefully compiled.

JOHN GIBSON.

DIARY OF GEORGE RIDPATH, MINISTER OF STITCHEL, 1755-1761. Edited, with Notes and Introduction, by Sir James Balfour Paul, C.V.O., LL.D. Pp. xxii, 410. 8vo. Edinburgh: Printed at the University Press by T. & A. Constable, Ltd., for the Scottish History Society. 1922.

THIS volume is a valuable contribution to the social history of the eighteenth century in Scotland—a period, in spite of its activity in so many fields of

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thought and action, only sparingly recorded in personal memoirs. The present book will, therefore, be gladly added as a memorial of the time to the works of Carlyle of Inveresk, Thomas Somerville and Ramsay of Ochtertyre. Ridpath's diary has less art about it than any of them : it was not intended for any eye but his own, and is often nothing more than brief, hurried, even perfunctory notes of the daily life of a country clergyman.

Ridpath was a friend of Carlyle, Robertson, Hume, among others, and was much respected as a man and a scholar, but his tastes were bookish and his life a retired one. He took a share in Assembly business from time to time, but his modesty and a habit of self-depreciation made him feel at a disadvantage amongst the men of the world and of rank with whom he was thrown during his Edinburgh visits—he was happier at home with his books and his parishioners and in his own Presbytery of Kelso.

His reading was voluminous, and varied from all kinds of historical matter, classical and modern (his favourite subject, perhaps), to the latest medical or scientific discoveries. His command of new books he owed to the lending library in Kelso, which in its turn owed no doubt much of its up-to-date quality to his own enlightened intelligence.

Doctors were scarce in the district in those days, and Ridpath was apt to combine medical with ministerial visitation in a period when smallpox, scurvy and fevers were of common occurrence.

His was a busy life : he went about continually throughout his scattered parish on foot and on horseback ; the roads were bad, especially in winter, but he traversed long distances and varied his pastoral duties by visits to brother ministers, returning their hospitality at his manse of Stichel with many a pleasant evening of talk and merriment. He worked constantly in garden and glebe, and talks of his ranunculuses and his tulips, his barley and flax. One would gladly have more details of this kind, but they are apt to be fugitive ; we grudge the space devoted to criticisms of books, though they reveal a sane and discriminating outlook on life and literature. Theology only made no appeal to him, and he is unhesitating in his impatience of it ; also, be it said, of all Methodism and what was then called 'high-flying' evangelicalism. Apart from these matters his attitude of mind was catholic and tolerant to all men ; his piety was genuine, if restrained and reserved in its utterance.

Considerations of space have compelled the Editor to omit the Author's meteorological notes, as also most of his references to contemporary history ; this perhaps deprives the Diary to some extent of perspective, but it could not be helped. Ridpath seems to have been at no time a strong man, and he died when he was 55, before he had quite finished writing his *History of the Borders*, a task that had been of great interest to him for a number of years. It was recognized as a sound and solid piece of work.

The Editor's notes to the Diary are of great service in explaining the text ; his introduction is as full of interest as of knowledge, and gives a complete and lively account of the man and his time, summing up with much skill many scattered notes on life and letters, on men and books.

MARY LOVE.

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THE STUDY OF EARLY MUNICIPAL HISTORY IN ENGLAND (from the Proceedings of the British Academy, Vol. X.). By Professor James Tait, Fellow of the Academy. Pp. 17. Large 8vo. Oxford: University Press. 1922. 1s. 6d.

IN this brief but valuable survey of the rapid achievements attained in a somewhat special department of antiquarian enquiry, the writer laments the untimely removal by death of almost every member of the little band of scholars whose researches, since the opening years of the twentieth century, had thrown so much light upon the obscurities of early urban life in England, too often inadequately treated hitherto by lawyers and local antiquaries. The work of Charles Gross, which dispelled the idea that the *gilda mercatoria* was the vital principle of the constitution of the medieval borough, would appear to have inspired the investigations of Miss Mary Bateson among the archives of France, Maitland in his differentiation between township and borough, Adolphus Ballard in his study of *The Domesday Boroughs*, Dr. Horace Round in his articles on the Cinque Ports and the Commune of London and Dr. Hemmeon in his *Burgage Tenure in England*. Mr. Tait's admirable paper should stimulate other workers to break fresh ground in this important field of historical research.

WALTER J. KAYE.

BRITISH HISTORY IN THE NINETEENTH CENTURY, 1782 TO 1901. By George Macaulay Trevelyan, C.B.E. Pp. xvi, 445. With 8 maps. 8vo. London: Longmans, Green & Co. 1922. 12s. 6d.

THIS book is highly interesting, and it succeeds in its purpose, which is to give us a picture of the change and development in British history between 1782 and 1901. To these years belong the invention of hard roads by Macadam, replacing roads full of bogs and quagmires. They were before long partially superseded by the invention of the locomotive, and later the use of petrol on roads and in the air brought new developments. During this period travel by land and sea are revolutionized, and communication by telegraph and telephone annihilates distance.

Mr. Trevelyan shows us in terse and clear language the state of Britain socially and politically from the days of Dr. Johnson, when 'time moved so slowly that they thought it stayed still withal,' until near our own day, when time spins fast, and when, as he puts it, 'the forms of our civilization are as transient as the bubbles on a river.'

To trace the history and progress of these years in one volume Mr. Trevelyan has found it necessary to condense; but probably his readers would have enjoyed the book more if this had not been thought necessary and a hundred pages had been added. However, he has succeeded in touching upon everything conceivable which bears on his subject—from the days when Pitt's attorney-general claimed that it was high treason for any man to agitate for the establishment of representative government, and when in 1802 one of the eminent group who founded the *Edinburgh Review* said, 'It was almost safer to be a felon than a reformer,' from the

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days when the law courts were filled with government prosecutions of editors and non-conformist preachers and radicals who had argued for parliamentary reform or the establishment of representative government, and when men were imprisoned and transported to Botany Bay for crimes such as these.

His History of the various reforms, beginning in George III.'s time, graphically shows us the stubborn reluctance of the wealthy classes and the clergy to relinquish the monopoly of every form of power which was in their hands. Education of the poor was looked upon askance even in 1807, when the compulsory element was taken out of a bill to establish parish schools in England out of the rates, on the complaint of the Archbishop of Canterbury that it did not leave enough power to the clergy. In the Commons it was argued by a member, who was afterwards President of the Royal Society, that to give education to the poor would be prejudicial to their morals and happiness.

The French Revolution and our own Industrial Revolution were the causes of the democratic movement in England. When the industrial change came and the privileges and good wages of the early Georgian period disappeared, there arose innumerable questions, each requiring an answer; and although the poor had no means of demanding compensation and had neither influence nor knowledge how to plead their cause, powerful advocates came forward on their behalf who had the necessary vision, 'without which the people perish,' and who took up the cause of reform and helped it on its way until it became a political battle cry.

Mr. Trevelyan's History, as already indicated, embraces an infinite variety of subjects dealing with the destructive and constructive measures necessary in the changing times of this era. The Church, the State, Schools, Education, Athletics, Wars, Trade Unions, Universities, Ireland, India, America, Africa, the Eastern Question, the Corn Laws are a few of the subjects dealt with. Mr. Trevelyan has rare judicial gifts, and his dealing with the various situations is characterized by dispassionate fairness as well as by critical acumen. His mental view is philosophic, but not dreamily philosophic. In these days one welcomes a middle course between the optimism of Browning's 'God's in his heaven, all's right with the World' and the pessimism of Matthew Arnold:

'For the World which seems to lie before us like a land of dreams,
So various, so beautiful, so new,
Hath really neither joy, nor life, nor light,
Nor certitude, nor peace, nor help for pain.'

Mr. Trevelyan is guarded at times, as when he says it is significant of much that in the seventeenth century members of Parliament quoted from the Bible, in the eighteenth and nineteenth centuries from the Classics, in the twentieth century from nothing at all; he leaves his readers to form their own opinion as to the significance of these changes. The general effect of his story of the building up of the new world is reassuring. It is, he says, 'a story of the new type of society, infinitely more complicated and interdependent in its parts, more full of potentialities for progress

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or disaster than anything the world has ever seen. It has been the work of all classes and of all parties, whether in co-operation or in conflict, over a space of eighty years of gradual, but rapid and continuous reform.'

HENRY G. COOPER.

INTRODUCTION TO THE HISTORY OF HISTORY. By Professor James T. Shotwell, Ph. D. Pp. xii, 339. 8vo. With one illustration. New York: Columbia University Press. London: Humphrey Milford. 1922. 17s.

AN entrancing book, which no student of history can read without feeling his pulse beat faster. It opens up a vision across the ages of the historian at work in the sunlit temple courts of Egypt, amid the gardens of Babylon, by the Ionian Sea, and on the banks of Tiber. And though chief place is given naturally to the critical investigation of the aims and methods of the older historians, from the recorders of the prowess of the Pharaohs down to Ammianus Marcellinus, room has been found both for an interesting chapter on books and writing, and for a stimulating discussion of the difficulties encountered by early writers in their efforts to arrive at a measurement of time. In a valuable postscript on medieval and modern history, Professor Shotwell lays stress on the importance of psychology and of economics in the interpretation of history.

As a preliminary to his study of the work of the older historians Professor Shotwell draws a distinction between the science of history and the art in history. His view that 'the difficulty...in dealing with the art in history is that, being largely conditioned upon genius, it has no single, traceable line of development,' will not, we think, command universal assent. It is, primarily, a question of literary criticism; but Gibbon stands in a definite relationship to other prose writers of the Age of Johnson, and in the prose of Macaulay and of Carlyle can be traced certain features that are characteristic of much of the prose written during the first half of the nineteenth century.

G. P. INSH.

RECORDS OF HARROGATE. Transcribed, edited and indexed by Walter J. Kaye, B.A., F.S.A. (Lond. and Scot.). Pp. xxxii, 237. With six illustrations. 8vo. Leeds: F. J. Walker, Briggate, Harrogate. 1922.

THIS book consists of a transcript of the Register of Burials and Baptisms of Christ Church, Harrogate, from 1748 to 1812, with supplementary extracts from the Knaresborough Register of much older date, from 1560 to 1753; these, of course, merely consist of lists of names, which, however useful to the local historian and genealogist, are not in themselves inspiring reading.

Very different however are the seventy pages devoted to extracts from the accounts of the parish of Pannel, which extend for nearly a hundred years from 1660, and throw much light on life in a village community during that period. There are many quaint entries, such as payments to the dog whipper for whipping dogs out of church, for carting beggars and

poor people through the parish from one district to another (presumably that the parish of Pannel should not have to support them), for the issue of beggars' badges, which were not of metal as in Scotland, but sewn on to the coat, for sweeping snow out of the church, for the erection of new stocks, and many other items which will repay attention.

The book is evidently the work of an enthusiastic local antiquary and record scholar, a class whose merits are often overlooked, but to whom the community owes a great debt of gratitude. The editor says he had collected much material for footnotes, but that the book (as usually happens) had far outrun the limits originally contemplated. We are all the poorer for this, but we may be thankful that he has managed to collect and publish such an interesting and useful series of local records.

J. BALFOUR PAUL.

SOME ACCOUNT OF THE OXFORD UNIVERSITY PRESS, 1468-1921. Pp. 104.

With many illustrations. 4to. Oxford : At the Clarendon Press. 1922.

THIS is a delightful volume, which pictures clearly the many-sided operations of the Oxford University Press. Within the last thirty years especially, the Press has done much to encourage scholarship and learning ; and it has made all students its debtors by producing the great *English Dictionary*. But it has also devoted its energies to the finer forms of illustration, and to printing in various Eastern languages. At the same time, it has through its world-wide agencies extended the knowledge of English classics and issued many educational manuals for use both at home and abroad. How these various branches of business have been carried on side by side with the publication of Bibles, prayer books and hymn books is told tersely and pleasantly in a volume which does marked credit to its anonymous author. •

ECONOMIC DEVELOPMENT IN DENMARK BEFORE AND DURING THE WORLD WAR. By Harold Westergaard. Pp. xii, 106. La. 8vo. Oxford University Press. 1922. 4s. 6d.

THIS is a study of a neutral country during a period when war interfered with the economic development of many of its neighbours, and is a careful piece of work. As it was completed in 1919 it does not allude to the restoration of a part of Sleswick to Denmark.

A MANUAL OF ARCHIVE ADMINISTRATION, INCLUDING THE PROBLEMS OF WAR ARCHIVES AND ARCHIVEMAKING. By Hilary Jenkinson, M.A. Pp. xx, 244, 6. 8vo. Oxford : The Clarendon Press. 1922. 10s. 6d.

IT is not an easy thing to say 'when documents become archives,' but this volume attempts to define the psychological moment, and not only does that but gives us good practical advice as to what archives are and how they ought to be kept, for the question of their custody is a great one. The latter part of the book deals with war archives, which is a newer subject. This

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book is concerned mostly with English archives (Scotland does not appear in the index) ; American work is mentioned.

THE FISCAL AND DIPLOMATIC FREEDOM OF THE BRITISH OVERSEAS DOMINIONS. By Edward Porritt. Edited by David Kinley. Pp. xvi, 492. La. 8vo. Oxford : The Clarendon Press. 1922. 12s. 6d.

THE title of this book explains itself, but its introduction adds that it is also the history of the growth of nationalities and how they adjusted their economic ideas to those of the Mother Country. It shows also that when the war broke out 'all differences of fiscal policy... were swept away by the feeling of common brotherhood among members of the Empire.' The book is very well put together.

POLITICAL IDEAS OF THE AMERICAN REVOLUTIONS, BRITANNIC-AMERICAN CONTRIBUTIONS TO THE PROBLEM OF IMPERIAL ORGANISATION, 1765 TO 1775. By Randolphe Greenfield Adams, Ph.D. Pp. ii, 207. With three illustrations. Crown 8vo. Durham, N.C. : Trinity College Press. 1922. \$2.00.

THE writer considers the epoch of American history when the thirteen colonies were endeavouring to become self-governing as the best period for the study of international relations. Sovereignty was a nebulous entity, but an agreement had to be arrived at. On this he has written his book, which includes the views of John Adams and James Wilson, and the relation of early American to modern thought.

THE PLACE-NAMES OF LANCASHIRE. By Eilert Ekwall, Ph.D. Pp. xvi, 280. 4to. London : Longmans, Green & Co. 1922. 25s.

THE University of Manchester has published this carefully compiled book. It is somewhat astonishing at first sight to notice how many of the Lancashire names are of Teutonic origin. Thingwell, for instance, 'bears interesting witness' to a Scandinavian settlement, but the river-names are to a large extent British, and it is notable that one of them is the Douglas, 'the black stream.' The British names clung to inaccessible places and forests where the Anglian population did not penetrate early. The book has been most carefully prepared, and the author's scholarly summary of the results he has obtained is worthy of every consideration.

WAR AND ARMAMENT LOANS OF JAPAN. By Ushisaburo Kobayashi. Pp. xvi, 221. Royal 8vo. London : Oxford University Press. 1922.

THIS book will be of use as a guide to financiers who wish to know what Japan has done. It begins with the Meiji restoration, includes the Satsuma rebellion, the Sino-Japanese War and the very important Russo-Japanese War. From thence it is continued to the present day with interesting chapters on the effects of War Loans on public finance and on the money market.

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BULLETIN OF THE JOHN RYLANDS LIBRARY. Vol. 7, No. 1. Pp. 166.
Royal 8vo. 2s. net. July, 1922.

To Scottish readers the most interesting of the historical articles in this brochure is undoubtedly 'Eleven Letters of the Earl (afterwards Duke) of Lauderdale to Richard Baxter,' very well edited by F. J. Powicke. They are curious letters full of theological study and written at a time when Lauderdale had little to gain from cultivating Baxter's friendship. The editor thinks that the latter perhaps saw the very best side of his much vilified correspondent. For the historian there is also 'A Jodrell Deed and the Seals of the Black Prince' by Margaret Sharp, M.A., and a 'Hand-List of the Mainwaring MSS.' by R. Fawtier, as well as R. S. Conway's 'Portrait of a Roman Gentleman.' The rest of the articles are mostly literary and religious.

ENGLISH GOVERNMENT FINANCE, 1485-1558. By Frederick C. Dietz, Ph.D., University of Illinois. Pp. 245. 1921. \$2.25.

FAR from being a dull work, this book is full of interest in recounting how the three first Tudor monarchs were financed. Henry VII., working through his extortionate agents, Empson and Dudley, by the application of all the strict feudal fines, had the royal wealth and the king's lands greatly extended, and though King Henry VIII. lightly sacrificed these agents to the nobles' resentment, they had made him very wealthy. We read here how the king's foolish policy and foreign wars were so disastrous that he left his son 'a debt of £100,000 in Flanders, an empty treasury, a debased currency, depleted estates,' as well as a costly war going on. This was in spite of the dissolution of the monasteries and oppressive 'benevolences,' which led to cruel persecution if resented. The failure of Northumberland to restore the revenues to a proper basis (1550-53) and the partial reconstruction under Queen Mary are well described also.

READINGS IN ENGLISH SOCIAL HISTORY FROM CONTEMPORARY LITERATURE, 1603-1688. Edited by R. B. Morgan. Pp. xii, 106. With 12 illustrations. Crown 8vo. Cambridge: University Press. 1922.

WELL illustrated and well chosen, this 'Source Book' will please any reader. It deals with the Stuart period. It relies much on Fynes Moryson, Evelyn and the immortal Pepys, and so is eminently readable, but other sources are King James I., George Fox, the extraordinarily erudite Hutchinsons, Fuller and, to end, the state trial of Alice Lisle. It is an excellent collection.

THE EXPANSION OF BRITAIN FROM THE AGE OF THE DISCOVERIES. By W. R. Kermack. Pp. 112. With 12 maps. Cr. 8vo. London: Oxford University Press. 1922. 2s. 6d.

THIS small brochure we wish was larger, for, good though it is, it is a pity its interest should be so condensed by its space. It is an attempt, and a

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successful one, to show the growth of the British Empire, since its sea power rose in Tudor and Stuart times, from a geographical point of view. The Elizabethan Fleet was one item and the Stuart succession removing the Scottish menace another, which allowed Britain to become a maritime power. Religious sects made it first a colonising one, to be rivalled by mercantile companies which aggrandised themselves. Other processes added to the British possessions, but always modified and changed much by geographical conditions and continual and wonderful discoveries. These, with the colonial history and that of the political developments in America, India, Australia, New Zealand and the other parts of the British Empire, are detailed in a very awakening way in this very short book.

BRITISH AND FOREIGN STATE PAPERS, 1919. Compiled and edited by Edward Parkes, Assistant Librarian of the Foreign Office, with the assistance of John W. Field and R. C. Thomson. Pp. xli, 1281. 8vo. London : H.M. Stationery Office, Kingsway, W.C. 1922. £1 11s.

ONE cannot detail the value of this work for it will be indispensable. It contains every treaty of its year, not only resulting from the world-war, but 'from China to Peru.' How historians got on without such wonderful productions as are now issued we cannot think, but we can congratulate them on the good work they did without them, and feel grateful that we live in a more documentary age.

A. F. S.

'TWIXT THE LAND AND THE MOSS : the story of a Northern Church in its Historical Relations. By the Rev. W. H. Macfarlane, senior minister of South United Free Church, Keith. Pp. xvi, 260. With many Illustrations. Second Edition. Demy 8vo. Edinburgh : Andrew Elliot. 1922.

THIS second edition is really a new book, and has grown out of a small pamphlet originally published in 1897. There is an interesting account of the town of Keith, and also of the many baffling forms of the Secession Church. The book will specially appeal to natives of Keith, but it is of service as throwing sidelights on the history of Scotland. The author tells his story clearly and frankly, and does not even gloss over the quarrels and misunderstandings which here, as elsewhere, have darkened the pages of ecclesiastical history.

HADRIAN'S WALL. By Jessie Mothersole. Pp. xx, 248. With 14 Illustrations by the author. Post 8vo. London : John Lane. 1922. 8s. 6d.

THIS is a pleasant record of a walk along the wall, and of some weeks spent in studying it, from the picturesque rather than from the archaeological point of view. The author has had the assistance of several noted antiquaries, and makes frequent references to the work of Dr. Collingwood Bruce. The book will be of interest to those who mean to visit the

Roman works in Northumberland, and is a good specimen of the guide book which aims at general impressions of a district rather than at detailed study of antiquities.

THE SCOTTISH MACS: their Derivation and Origin. By James B. Johnston, M.A., B.D., Falkirk. Pp. 56. Demy 8vo. Paisley : Alexander Gardner. 1922. 5s.

THE author is already well known for his works on Place-names—that somewhat thankless branch of study, where all results arrived at are apt to be viewed with suspicion. This new work is a rough hand list of Macs, and makes no pretence to being an exhaustive examination of the subject. It deals with upwards of 300 names beginning with Mac, stating where the names are found to-day, what the root and meaning of the word is, and the place of origin and early instances. The result in tabulated form is interesting; it represents much hard and careful research.

STORIES FROM THE EARLY WORLD. By Miss R. M. Fleming. With an Appendix by H. J. Fleure, D.Sc. Pp. 156. With 12 Plates. 8vo. London : Benn Brothers. 1922. 15s.

THE ancient tales in this collection bear chiefly ‘upon the growth of human skill and the development of civilization.’ Many of the stories are from Asia; others from Egypt, North America, Africa, and a few from Europe. They all have a bearing on the teaching of history and geography; and the varying ideas in the early stages of the world’s development, which show themselves in these tales, add a peculiar interest to the volume. The illustrations, which have been beautifully reproduced, have been selected with much care.

A LITTLE HISTORY OF S. BOTOLPH’S, CAMBRIDGE. By Arthur W. Goodman, M.A., Rector. Pp. x, 128. With map and five illustrations. Cr. 8vo. Cambridge : Bowes & Bowes. 1922. 7s. 6d.

THIS is an excellent book, and aims at giving a history of a parish and church in Cambridge, and in doing so throws light on the history of Cambridge and also of ecclesiastical customs and rules. The work of future historians would be lightened if the number of good parish histories, such as this, were largely increased. The illustrations and plans are clear and well chosen. The Rector of S. Botolph’s is to be congratulated on this contribution to Cambridge and to Church history.

THE ARMORIAL GALLERY: HIGHLANDERS’ MEMORIAL CHURCH. Described by John A. Stewart, F.S.A.Scot. Illustrated by Graham Johnston, Herald Painter to the Court of the Lord Lyon. Pp. 43. 4to. Glasgow : The St. Andrew Society. 1922. 3s. 6d.

THE Highlanders’ Memorial Church in Glasgow is as yet the most notable monument in Scotland erected in memory of the fallen and in honour of

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heroism; and the affection which has planned it to be useful has striven to make it beautiful as well—hence the armorial shields which are catalogued in this book.

‘Through the kindness of the Donors mentioned in the catalogue,’ says the Editor, Mr. John A. Stewart, in his Introduction, ‘forty-four shields are displayed on the front of the gallery. Many of these shields show the old basic arms for certain names, while others contain the arms of a chief of a Clan or, it may be, of a section of a Clan. On the whole, the Armorial Gallery contains a fairly representative though small collection of Scottish, and especially Highland arms.’ The whole of the forty-four shields are reproduced in outline, in reduced fac-simile, we understand, of the originals. And to judge by the additional reproduction, opposite the title-page, of a section of the gallery-front with three of the shields, all in colours, the whole must produce a brilliant and decorative effect.

In the book the name of the donor is placed opposite each shield, along with a verbal blazon of the arms it contains, and accompanied here and there, unaccountably, by odd comments which seem calculated to cry down the credit of the collection.

The charges on the shields follow in general the best models, but are almost as generally too large for the shields which have to bear them; and it is unfortunate that the Royal Arms should be made to present the most flagrant example of overcrowding. Herald painters of almost all schools and persuasions have indulged in liberties with the heraldic lion's tail. Some of these were certainly meant to enable that appendage to convey ideas, but why represent the tail of the royal beast as a kind of brush?

THE STORY OF LEITH. By John Russell. Pp. viii, 472. With many illustrations. Crown 8vo. Edinburgh: Thomas Nelson & Sons. 1922. 5s.

THIS volume was prepared with the view of being used by the senior classes in the schools controlled by the Leith Education Authority. It traces the history of the town from ‘its beginnings in the little cluster of huts by the water side’ till to-day. It touches on all aspects of the life and activities of the community; and the numerous plans and engravings are clear and well chosen. It is a useful book, which will be welcomed by many lovers of local history.

EVERYDAY LIFE IN THE NEW STONE, BRONZE, AND EARLY IRON AGES. Written and illustrated by Marjorie and C. H. B. Quennell. Pp. xii, 120. With Chart and 90 illustrations. London: Batsford Ltd. 1922. 5s.

THIS volume was written for young people, with the object of ‘giving a broad view of certain principles which have governed the work of man.’ This object has been successfully achieved, and these vivid and succinct descriptions of early life are suggestive as well as interesting.

The many drawings which the authors have prepared form not the least enjoyable portion of the book. Where the originals can be seen in the

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prehistoric room at the British Museum, short notes show where the objects drawn can be found in the Museum.

MEMOIRS OF HIS OWN LIFE. By Sir James Melville of Halhill. With an introduction by W. Mackay Mackenzie. Pp. xx, 228. Small 8vo. London: Chapman and Dodd. 3s. 6d.

THIS new edition of a valuable book is very welcome. It is almost a hundred years since these memories were last printed, and then in the very limited form of the Bannatyne Club. An edition available for historical students has long been wanted, and we congratulate the publishers on their enterprise.

There is never lack of interest in these memoirs. The author was a shrewd observer and held a ready pen. Side by side with the tragedy of Queen Mary, and with many intrigues, we have humorous insights into the Court of Elizabeth, who is portrayed as a scheming woman consumed with jealousy rather than as a queen.

A Prologue to American History (by S. E. Morison) is an interesting address. Mr. Morison thinks that the American Revolution was 'inevitable'; that is 'inevitable without imaginative statesmanship of an order seldom attained in theory by historians and never attained in practice by politicians.'

In the *English Historical Review* for October Mr. R. Stewart Brown deals with the "Domesday" Roll of Chester.' He dates its establishment from the years 1181-1232 and defines it as a species of Public Register of Deeds and transactions. Mr. C. Kenneth Brampton devotes the first part of a study of Marsiglio of Padua to an examination of the internal facts of his life, so far as these can be traced. Mr. A. F. Pollard continues his examination of the 'Council, Star Chamber, and Privy Council under the Tudors,' dealing in this number with the Star Chamber. In the 'Notes and Documents' Mr. Thorndike deals with 'Daniel of Morley,' Mr. Kingsford with 'The Earl of Warwick at Calais in 1460,' and Miss E. F. Rogers furnishes an important 'Calendar of the correspondence of Sir Thomas More.' Other notes deal with Sebastian Cabot, Thomas North, and some early Foreign Office Registers at the Public Record Office, 1810-1818. The number contains the usual reviews and short notices.

The quarterly number of *History* for July, 1922, opens with an interesting and somewhat provocative article by Dr. Ernest Barker on 'History and Philosophy' in the form of a meditation on some thoughts suggested by Croce's *Teoria e storia della Storiografia*. Dr. R. B. Hepple provides a solid footnote to Roger in his *Monastery School of Jarrow*. It may be questioned whether he is justified in assigning to Roman Civil Law a real place in the monastic studies of the period. Fitting's conclusions on the subject cannot be accepted without reserve, and while Flach is perhaps too negative in his *Etudes critiques sur l'Histoire du Droit Romain au Moyen*

Age, he certainly lodged a weighty caveat against the German scholar's thesis. The 'Historical Revision' is devoted to *The Origins of the Punic Wars*. The number contains valuable reviews of recent publications by competent authorities. The notice of the death of Duchesne is inadequate.

The October number of the same review provides an antidote to Dr. Barker's speculations in a spirited 'riposte' by Professor A. F. Pollard, *An Apology for Historical Research*. Professor Rodolico describes 'The Struggle for the right of Association in Fourteenth-Century Florence' in a manner which will interest readers of Espinas' *La vie urbaine de Douai au Moyen Age*. Mr. Gooch contributes a short note on Ernest Lavisse. The 'Historical Revision' is devoted to *The Pilgrim Fathers* and *The number of casualties at Peterloo*.
D. B. S.

In *The Antiquaries' Journal* (July) Sir Hercules Read opens with an account of the wonderful discoveries made during the last twenty years in Eastern Turkestan by Sir Aurel Stein. By these a mine of knowledge has been opened up for students of the history of Far Eastern art and archaeology, while problems of the movements and avenues of early civilization are presented, the solution of which can only be guessed at at present. Sir Aurel Stein's works, *Serindia* and *The Cave of the Thousand Buddhas*, are the record of his crowning achievements on the geographical and archaeological sides.

Mr. W. A. Littledale contributes a note, supplemented by Mr. C. H. Hunter Blair, on the Seal of Robert Fitz Meldred, ancestor of the Neville family. It is the earliest (probably about 1183) that is known showing the saltire. The family has Scottish blood if carried back as is claimed to Meldred, or Maldred, second son of Crinan, Abbot of Dunkeld, and thus brother of Duncan I., 'the gracious Duncan' of Shakespeare. Mr. Eric Maclagan describes the panels from a Carolingian Ivory Diptych. The Hallstatt period in Ireland is dealt with by Mr. E. C. R. Armstrong. The number contains many other interesting articles, including one on the puzzling place-name *Coldharbour*.

The *Antiquaries' Journal* for October deals with New Discoveries in Knossos by Sir Arthur Evans; Notes on early British pottery by Mr. E. T. Leeds; the Age of Stonehenge by Mr. Rice Holmes; the amulet of Charlemagne by Sir Martin Conway; Roman Cardiff by Mr. Wheeler, and other papers. The number is provided with excellent illustrations.

In the *Juridical Review* for September Mr. T. B. Simpson's account of Boswell as an Advocate is noteworthy, especially for the light shed upon his constant recourse to Dr. Johnson for legal advice and the evident zest with which it was given by the doctor. Mr. William Roughead surveys at length that *cause célèbre* of the early seventeenth century—the Overbury Murder Case. We do not find among the many authorities cited any reference to Richard Niccol's remarkable contemporary poetical effusion *Sir Thomas Overburies Vision*, 1616, which was reprinted with a valuable introduction by the late James Maidment for the Hunterian Club in 1872.

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Professor MacKenzie Stuart and Mr. J. A. Lillie summarize recent leading Scots Cases and recent leading English Cases respectively.

The *Juridical Review* (December) contains obituary notices of two eminent members of the legal profession. Lord Strathclyde writes with warm appreciation and discernment of the qualities of his friend, the late Lord Scott Dickson. Sir James Balfour Paul gives a personal appreciation of the late Professor Sir John Rankine. Characteristic portraits accompany these notices.

Mr. Andrew Wishart brings forward the indubitable claim of the late Professor of Public Law in the University of Edinburgh—Professor Lorimer—to have in his *Institutes of the Law of Nations* worked out in detail the scheme of a League of Nations. Lorimer saw fifty years ago what is only now being dimly visualized, that to be effective the league must have vital powers, enactment of laws, their interpretation and their enforcement.

Mr. Herman Cohen writes on *The Inns of Court and Inns of Chancery*. Recent leading cases, Scots and English, receive due notice.

Notes and Queries for Somerset and Dorset (July) prints a copy of the Address from the town of Shaftesbury to King George I. congratulating His Majesty upon the suppression of the rebellion of 1715. Among quaint but courtly phrases occurs the following sentence: 'Pardon us for imploring the Almighty that he may very late translate you, Our Inestimable Blessing, from this to an Eternal Crown above.' And again, 'May your scepter in Peace descend to the Meritorious Hands of your Royal Offspring, and may all your kingdoms to this end unite, in some measure to recompense your absence from Immortal Bliss!' There is an interesting note by Mr. Saunders, accompanied by a photograph, upon Martock seventeenth century cottages, now, we regret to think, fast disappearing. These are built of Ham Hill stone, with mullioned windows, well proportioned gables, and generally well thatched roofs. The illustration discloses their beauty.

The Rev. Donald Beaton contributes an Introduction to *Caithness and Sutherland Records*, Vol. I. (Viking Society). After a general historical survey, he treats of Land Conveyance, the Mediaeval Church in the two counties, and finally of the Bishops of Caithness. These subjects are handled with knowledge. The recent researches of the Rev. A. Black Scott into the early influence of Pictish Christian Missionaries among the Northern Picts are duly referred to.

The Journal of Indian History (Humphrey Milford: Oxford University Press) for September shows signs of increasing vigour. Although still in its first year, it has grown into a bulky quarterly. The main paper in this number is the Editor's article on the Anglo-Portuguese negotiations relating to Bombay, 1660-1667.

Other contributions are by Dr. A. S. Tritton on the Rise of the Imams of Sanaa, and by Sita Ram Kohli on the Army of the Maharaja Ranjit Singh, especially its artillery. There are also numerous reviews of books and some excellent illustrations. This Journal, although young, is challenging attention.

The American Historical Review for July gives first place to a weighty and instructive article by Professor Charles H. Haskins on Science at the Court of the Emperor Frederick II. The Emperor's astrologers, Michael Scot and Theodore, come before the reader, and a notable series of questions put to the former by the Emperor is printed from unpublished manuscripts. It must have been somewhat staggering even to an Admirable Crichton like the Scottish philosopher to be asked and expected to give a definite reply to queries such as—Where are heaven and hell and purgatory? How far is one heaven or one abyss from another? In which heaven is God to be found, and where are the souls of the departed, and why do they not communicate with us for love or even hate? Evidently Frederick was ahead of his age—*stupor mundi* to his own time and a marvel still to ours, as Professor Haskins well says.

The Development of Metropolitan Economy in Europe and America, by N. S. B. Gras, is the second paper. He defines metropolitan economy as 'the concentration of the trade of a wide area in one great city,' and points out its far-reaching importance as an economic institution.

The number for October opens with a lecture on 'The International State of the Middle Ages: some reasons for its failure,' delivered by Mr. A. C. Krey before the American Historical Association. The writer defines his subject as the political aspect of the Papacy in the period from Gregory VII. to Boniface VIII. and indicates the contributions of Cluny, the 'Peace of God,' the emancipation of the Papacy from local influences, and the Crusades. Mr. A. H. Basye draws attention to an interesting stage, 1768-1782, in the constitutional development of the office of Secretary of State for the Colonies, and Mr. W. F. Galpin studies 'The American Grain Trade to the Spanish Peninsula, 1810-1814.' An important contribution to the history of American Foreign Policy is provided in Mr. Tyler Dennett's 'Seward's Far Eastern Policy.' Among the documents printed is an article contributed by Talleyrand in 1796 to the *Courrier de la France et des Colonies* of Philadelphia. Mr. Theodore Collier furnishes a sympathetic notice of Goyau's *Histoire Religieuse de la Nation Française*, but the third volume of the *Cambridge Medieval History* is subjected to very unfavourable examination by Mr. J. W. Thompson. Mr. James Sullivan's estimate of the fourth volume of Carlyle's *Medieval Political Theory* is not a high one. Generally, the reviews indicate that the critical faculty is highly developed in the States.

The *Revue Historique* for May-June opens with an important contribution by M. Gustave Fagniez on the course of French diplomacy during the years from 1774 to 1787, a period which has been overshadowed by the Revolution. Mention may also be made of M. Lascaris's study, *L'Église catholique en Grèce*. The *Bulletin historique* is devoted to a survey of recent publications on the French Revolution. Among the books reviewed are Evan's *The Palace of Minos at Knossos*, and a new departure is marked by the inclusion of the *Times Literary Supplement* among the periodicals analysed.

The number of the same review for July-August contains the conclusion of M. Fagniez's study and the first instalment of a review by M.

Bémont of recent publications on British history. Among the books specially reviewed is the new edition of Palgrave's historical writings. An appreciative notice is devoted to Count Baguenault de Puchesse, who died in the month of April. The founder of the *Revue d'histoire diplomatique* and the editor of the *Letters of Catherine de Medicis* was well known to students as a scholar, but the man himself was as fine as his work, and those who, like the writer of these lines, had the privilege of his acquaintance, will realise that France has lost a distinguished and devoted son.

The September-October number opens with an interesting article by Inna Lubimenko on *Les marchands anglais en Russie au XVII^e siècle*. This is followed by the first instalment of an elaborate study on *Les vrais et les faux Mémoires du cardinal de Richelieu*, by M. Pierre Bertrand. M. Bémont concludes his review of recent contributions to British history, and M. Halphen furnishes an appreciative notice of W. Bauer's *Einführung in das studium der Geschichte* (Tübingen, 1921). The revival of the admirable *Nouvelle Revue historique de droit français et étranger* will be noted with pleasure by students of legal history. D. B. S.

The *Revue d'Histoire Ecclesiastique* for April-July, 1922, opens with a tribute by Professor Van der Essen to the memory of Alfred Cauchie, who both as a scholar and a teacher played an important part in the life of the University of Louvain. M. Pelzer prints from a Vatican MS. by Richard of London the propositions from the writings of William of Occam condemned by a Papal commission in 1326 and furnishes an interesting introductory note. Father de Ghellinch contributes the first instalment of a study of Richard de Bury as a man of letters and bibliophile. Among the works reviewed are Parry's *Pastoral Epistles* (ouvrage de tout premier ordre), Inge's *Philosophy of Plotinus* (une causerie savante) and Mitchell Hunter's *Teaching of Calvin* (volume sobre de références, à la manière anglaise, mais pourtant si fouillé et qui témoigne d'une connaissance très profonde et très exacte de l'œuvre de Calvin). The number is furnished with a valuable bibliography. D. B. S.

In *Archivum Franciscanum Historicum* (January to April) Father Franz Pelster makes out a strong case for the Franciscan Friar Thomas of York being the author of the anonymous tractate *Manus quae contra Omnipotentem tenditur*. This production played an important rôle in the controversy between the Friars and the University of Oxford which lasted from the middle of the thirteenth century for upwards of sixty years. The feud was caused by the rules of the two Orders of Friars—Dominicans and Franciscans—forbidding their members to take a degree in arts. The University, on the other hand, required that the student in theology should have graduated in arts before entering upon his theological course. Thomas of York (1253) was objected to, when presented to incept in theology, on the ground of his not having a degree in arts. See Little, *Grey Friars in Oxford, passim*, for details of the long-drawn-out contention.

Other articles are the *Legenda Antiqua S. Francisci*, manuscript preserved in the Communal Library of Perugia, by Father F. M. Delorme, and

by Father L. Oliger, *Documents and Statutes of the Claresses*. There are the usual reviews of books, indicating the recent extensive output of literature relating to Franciscanism.

Tijdschrift voor Geschiedenis, sent to us by the courtesy of the Dutch government, shews the entirely modern and efficient workmanship of contemporary Holland in research and historical scholarship. A two monthly magazine, annual subscription f. 12.50, it has a diversified programme. In parts i. and ii. (pp. 1-144) Dr. Unger deals with medieval government in Middelburg. Tilting and tournament at the Burgundian Court under Charles the Bold are briefly described by Prof. Cartellieri, whose account will supplement our knowledge for the criticism of both Quentin Durward and Anne of Geierstein. Dr. Theissen, by an industrious grouping of bibliographical and other data especially drawn from the 'albums' which were a vogue inherited from the sixteenth and seventeenth centuries, compiles a truly informative narrative of the student life of two young 'Groningers' at Leyden University in 1720-1722 learning medicine and the arts. A valuable essayette by Dr. Schelven is based on a list of schoolmasters and mistresses in Middelburg in 1591.

In parts iii. and iv. (pp. 145-288) Dr. De Grave tracks the footsteps of Dante in his attitudes towards the princes of Europe in his time, whose adventures, for the most part recorded in the *Inferno*, gave him an ample enough basis of drastic review. Dr. De Grave has not forgotten the allusion to Edward I. and 'the Scot' with whom he was at war. A paper by Dr. Haitjema concerns the correspondence between Augustine and Jerome.

Dr Van Dillen discusses the economic effect and significance of modern imperialism. Fr. De Witt Hubert returns to an old story in his account of the siege of Charleroi by the French in 1693, now rendered very circumstantial and detailed by the diary of Van Dedem, a colonel in the beleaguered garrison, which, despite hot and bitter protest by Van Dedem and others, was reduced to surrender as a sequel to the overthrow of William III. in the fierce battle of Neerwinden.

Fornvännen Meddelanden från K. Vitterhets Historie och Antikvitets Akademien, 1918-1919. These well-illustrated pamphlets of old lore show us how well informed Sweden is about its own antiquities. There is little in them connecting Sweden with outside countries, if we except the account of a Swedish burial place at Jaroslavl in Russia, but they contain much of interest and value relating to tombs, fonts, cathedrals and other relics of the past in Sweden. There are contributions by T. J. Arne, F. de Brun, Gunnar Eckholm, Otto Frödin and B. Norman in both numbers, as well as by many other writers.

Notes and Communications

THE HIGH SCHOOL OF EDINBURGH AND ITS SITUATION BEFORE 1555. Sir Daniel Wilson, in a foot-note to his description of the archiepiscopal palace of the Beaton at the foot of the Blackfriars Wynd, says :—‘ The ancient mansion of the Beaton possesses an additional interest, as having been the first scene of operations of the High School of Edinburgh, while a building was erecting for its use ’ (*Memorials of Edinburgh in the Olden Time*, 1891, ii. 136). In support of this he cites two short extracts from the Burgh Records of March 1554-55 and June 1555, as given in the privately printed *Tabula Naufragii*. Dr. William Steven knew that the High (or Grammar) School was in existence by 1519, that David Vocat was head-master then, that Henry Henrison was appointed his colleague and successor in 1524, and that the Beaton mansion was rented for a year in the summer of 1555; but he does not appear to have known where the school was situated before that summer (*History of the High School of Edinburgh*, 1849, pp. 3-6). Steven had access to the Burgh Records, and quotes, among others, minutes of 1519, 1531 and 1555, but inaccurately, in his appendix. ‘ Johnne Betoun of Capildra ’ is transformed by him into ‘ Johnne Botory of Thraldra. ’ These minutes can now be seen in the *Extracts from the Records of the Burgh of Edinburgh*, printed for the Scottish Burgh Records Society, i. 193, 194; ii. 48, 218. The school-house belonged to Vocat, and by him was disposed to the town on the 24th of January, 1516-17 (*Ibid.* i. 165). The disposition does not appear to be extant, but an idea of its substance may be gleaned from the writ of 3rd June, 1552, which I have transcribed from the original belonging to Mr. James Sinton.

This writ proves that the school was in a ruinous condition and apparently deserted in 1552; that it was then intended to repair it; and that it was situated in ‘ the Kirk of Feild Wynd, on the eist part of the trans thairof. ’ A minute of 12th March, 1554-55, referred to by Wilson but overlooked by Steven, ordained the treasurer, ‘ sa sone and as gudlie as he may, caus big the Grammer Skule, lyand on the eist syd of the Kirk of Feild Wynd ’ (*Extracts from the Records of the Burgh of Edinburgh*, ii. 210). The school, therefore, which came into use, after the Beaton mansion had temporarily served the purpose, was either the school of 1516-17 renovated, or a new school on its site. Vocat’s other properties adjacent to the school, and referred to in the writ of 3rd June, 1552, were made over, on the 24th of January, 1516-17, to the chaplainry *in nomine Jesu*, which he had founded in the Kirk of Field (*Registrum Domus de Soltre, etc.*, Bannatyne Club,

pp. 264, 265). As the appointment of the master of the Grammar School lay with the Abbot and chapter of Holyrood (*Liber Cartarum Sancte Crucis*, Ban. Club, pp. 256-258), it has been inferred that David the First's grant of the churches of the Castle and of St. Cuthbert's of Edinburgh carried, though it did not name, the school of Edinburgh to the canons of Holyrood (*Miscellany of the Spalding Club*, v. app. to preface, p. 69).

'Tertio Junii, anno, etc., lii do.

'The quhilk day, the provest, baillies and counsale sittand in jugement, understandand that the place and rowme quhair thair Hie Skule wes of before, quhilk is now waist and fallin down, lyand in the Kirk of Feild Wynd on the eist pairt of the trans thairof, wes gevin to thame and thair successouris be umquhile Maister David Wocat, Maister of the Hie Skule and foundatoure of the prebendery callit *De nomine Jesu* in the College of the Kirk of Feild, quha wes heritoure thairof for the tyme, for the releif of fourty twa schillingis annuell awing—furth of the said scule, and the haill rest of the said M. Daudis landis lyand in the said wynd adjacent to the said scule and partenying to the said chaipplanre—to the chaipplane of the rude alter (*sic*) situat within the College Kirk of Sanct Geill in the loft thairof, and twa schillingis to ane chaipplanrie foundit be umquhile Thomas Swift, desyrit Schir Johnne Bauld, chaipplane of the said prebendarie callit *Nominis Jesu*, to thoill thame have intromissitioun with the said scule and rowme thairof, and [to] deliver to thame the keyis of the foir dure of the samyn, to the effect that thay mycht use, [occ]upy and repair the samyn, gyf thay thocht expedient, for ane scule in tyme cuming, and tha[y to r]eleif him of the said fourty twa schillingis annuell; quhairto the said Schir Johnne cons[entit] and presentlie deliverit to the said thesuirar of the said burght the keyis of the duir of the said skule; and thairfore the said provest, baillies and counsale bindis and oblissis thame and [thair] successouris to releif the said Schir Johnne and his successouris, chaipplannis of the said prebendarie *Nominis Jesu*, of the said fourty twa schillingis annuell zeirlye in tyme cuming, and to pay the samin for his releif to the chaipplannis foirsaidis; and als the said Schir Johne dischairgit the said provest and baillies of the said annuell of fourty twa schillingis of all termes bygane to the dait heirof. Extractum de Libro Actorum Curie Burgi de Edinburght, per me Alexandrum King, notarium publicum et scribam dicte curie, sub sigillo communi dicti burgi, meis signo et subscriptione manualibus.

'A. KING.'

The seal is gone. Words and letters completely worn out are supplied within square brackets.

D. HAY FLEMING.

TOUR OF MARY QUEEN OF SCOTS THROUGH SOUTH-WESTERN SCOTLAND (*S.H.R.* xviii. 1). In a paper on this subject published in this *Review* in October 1920, I referred to the pilgrimage of James IV. to the shrine of S. Ninian at Whithorn in 1512 as having been generally assumed to have been the last occasion of the visit of a crowned head to that ancient burgh. I was under that impression myself, until the roll of expenses kept by Queen Mary's French equerry during

her tour through the south-west in 1563 was brought to my notice, showing that she was in Whithorn on 10th August in that year, and spent the night there. But Mr. G. W. Shirley, of the Ewart Public Library, Dumfries, has obliged me with a reference to the *Transactions of the Scottish Ecclesiological Society*, vol. i. p. 148, showing that between the last pilgrimage of James IV. to Whithorn in 1512 and Queen Mary's visit in 1563, James V. paid his vows there in 1526 and 1533.

From the same reference it appears that the visits of James IV. to S. Ninian's shrine were much more frequent than is generally understood. According to Bellesheim, he made eight pilgrimages thither (*History of the Catholic Church of Scotland*, trans. by D. Oswald Hunter Blair, O.S.B., vol. i. p. 14), whereas no fewer than sixteen of this monarch's visits are recorded during his reign of twenty-five years and two months, namely in 1491, 1492, 1496, 1497, 1498, 1501, 1503 (twice), 1504, 1505, 1506, 1507 (twice), 1508 and 1512.

Mr. Shirley has sent me also an extract from the *Burgh Court Books of Dumfries*, showing from the accounts submitted by 'Andro Cunyngham, burgess of Dumfries, before George Maxwell provest, Amer Maxwell baillie,' etc., in September 1563, the cost of 'the haill ristis varit vpon the brig port and of the frier port and cawssayis makin for resawing of s^d souerane lady in Julii and August last by past.'

When on 18th August, 1563, Queen Mary left Galloway, riding over the old bridge (fondly, but erroneously, called Devorguilla's) across the Nith, 'soupper et coucher a Domfric chez Maistre Mazouel,' two hundred and eighty-six years were to run by before any monarch should visit Galloway. Mary, indeed, was there once more in 1568, a monarch no longer, but a dethroned fugitive from the field of Langside. It was not until August, 1849, that the province was to be honoured once more by the presence of its sovereign, when the royal yacht, with Queen Victoria and her Consort, the Prince of Wales and the Princess Royal on board, escorted by four warships, dropped anchor in Loch Ryan on the return voyage from Ireland.

HERBERT MAXWELL.

Monreith.

JOHNSTONE OF WAMPHRAY. A volume on Wamphray parish and neighbourhood is in preparation, the joint product of Mr. F. A. Johnston and Mr. R. C. Reid, Ruthwell. So far, the papers of the family of Johnstone of Wamphray, 1549-1747, have not been traced. Col. Robert Johnstone of Wamphray sold the estate in 1747, and died in 1781 leaving a son and daughter. His papers were seen and quoted by Douglas (*Baronage*, p. 232) between those dates. None of the documents quoted by Douglas are amongst the present titles of the estate, though there is reason to believe they are still in existence. Information as to the location of the papers and of any present descendants of Col. Robert Johnstone, described by Douglas as 'of Alton,' is sought, and Mr. Reid (Claughtree, Ruthwell, Dumfriesshire) will be grateful if any one having such information bearing on the family of Wamphray, or the history of that parish, will communicate with him.

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The Roman Fort at Balmuildy

THE excavation at Birrens in Annandale undertaken by the Society of Antiquaries in 1895 was the first systematic investigation of a Roman fort in Scotland. The success attained led, as so often happens in archaeology, to many similar undertakings, and for nearly twenty years the excavation of Roman sites was carried on with little interruption. The digging out of Balmuildy on the Antonine Wall by the Glasgow Archaeological Society in the years 1912 to 1914, brings the period to a close. The work was hardly completed when the Great War put an end to any serious archaeological operations.

The report by Mr. S. N. Miller¹ now before us, though somewhat belated, is none the less welcome. We can see no trace that it has suffered from the great events which interrupted its progress. When we compare Mr. Miller's volume with the report on Birrens, issued in 1896, one cannot but note the immense increase in published archaeological material which is now at the disposal of the excavator. At Birrens the references to archaeological literature were few. The great series of publications of the German Limes Commission was only beginning to appear. The study of pottery was in its infancy. Except in dealing with the epigraphy, admirably treated by Dr. James Macdonald, the contributors to the report were pioneers, confining

¹ *The Roman Fort at Balmuildy (Summerston, near Glasgow) on the Antonine Wall.* By S. N. Miller, M.A. Pp. 120. With plans and illustrations. Small 4to. Glasgow: MacLehose, Jackson & Co. 1922. 21s.

themselves for the most part to recording the facts which came before them. There was little attempt to interpret the plan, while the smaller relics which came to light were described without any reference to the position in which they were found.

How greatly the archaeological horizon has widened may be seen from the list of books and periodicals prefixed to Mr. Miller's volume. Of some fifty-five titles enumerated, the great majority belong to publications which have been issued in the last twenty years. The meaning of things which eluded the earlier excavators has been made plain to us from details of evidence brought together from many sites, and the monotonous and often unreadable descriptions of foundations which characterized so many of the older reports has given place in Mr. Miller's hands to an ordered and intelligible story.

The site of the fort of Balmuildy, the fifth station from the end of the Antonine Wall, lies on the south bank of the Kelvin at no great distance from Glasgow. Beyond the river the Blane Valley opens out towards the north; to the south lies the valley of the Clyde, by which a Roman road probably passed to Annandale and thence to the wall of Hadrian. It is doubtless due to its strategic position that, like Castlecary further to the east, the main defence of the fort was a stone wall.

The corners of a Roman fort in the normal plan were round. In most of the forts of the Wall of Hadrian it has been noted that when originally planned the northern angles had been rounded. They had been constructed earlier than the wall which later linked them together. On the other hand, the forts of the Antonine Limes, as far as they have been investigated, join the vallum at right angles, because their construction was contemporaneous, the whole forming part of a general scheme. The story of Balmuildy which Mr. Miller has so admirably extracted from worn foundations, from fragments of stone and broken pottery is the story of an Antonine fort.

Like Rough Castle or Castle Cary, it joined the vallum at right angles; but the angles on the south appear to have taken the usual rounded form. The north wall of the fort takes the place of the vallum. The Antonine fosse is carried across the front, though it terminates on either side of the gate to allow for the passage of a road. Each of the four gates was defended by towers. A corner turret was noted at the south-east angle, the corresponding angle on the west was not excavated. The wall at the north-east and north-west angles

had been widened as if to afford a platform for some military engine, a feature which may be seen in the walls at Bremenium. Beyond the walls on the south and west were triple lines of ditches, but on the east, where an annex covered the front, the number of the ditches was reduced to two. The impressive foundations of the north gateway are reproduced in one of the many excellent photographs which illustrate the report, and Mr. Miller from the evidence of fragments uncovered on the site is able to suggest a reconstruction of the gate, a structure having a single arch flanked by towers supporting the beams which would carry the rampart wall across the entrance.

The ground plan of the gate is unusually complete, and although admittedly, as in all such reconstructions, many details of the superstructure must be conjectural, the attempted restoration is of interest. The fragments of the tablet discovered among the foundations, which Mr. Miller places above the gate, are of great importance, as they have preserved in part the name of *LOLLIVS VRBICVS*, and part of the figure of the capricorn, the badge of the Second Legion. It seems clear that, like the well-known fragment from Balmuildy, heralded as an epoch-making discovery by Gordon, the tablet commemorated work completed by soldiers of the Second Legion in the Governorship of Urbicus during the construction of the vallum somewhere about the year A.D. 142.

In the interior of the fort the plan shows an unusually well-defined series of stone buildings lying to the south of the *Via Principalis*. Apparently four double barrack blocks constructed of timber lay in the *Praetentura*, and two single and two double blocks in the *Retentura*. The general scheme for the lay-out of a fort was no doubt much the same at any given period, whether we find it in Britain or on the German Limes, but the plans show constant variation in detail, and it may safely be said that no two Roman forts are precisely alike. The plan of the administrative buildings, as a whole, is probably the most complete as yet uncovered in Scotland. The headquarters building, flanked by storehouses, occupies the centre. The square corridor-house usually assigned to the Commandant lies at the east end of the line, while at the opposite end are two long narrow blocks filling the corresponding site near the west gate. The headquarters building shows the usual features. The outer courtyard opening upon the street, the long comparatively narrow inner courtyard, upon which opened a series of five

rooms of which the central chamber, the *Sacellum*, projects somewhat beyond the line of the main wall on the south. The outer courtyard shows no trace of the pillared veranda surrounding three sides, as at Birrens or Newstead, but in its place we have an interesting variation of the plan in the two long narrow chambers running north and south, which appear to have been constructed one on either side of the court. The chamber on the east, clearly a later insertion, had its inner wall built with four buttresses, while a similar number of buttresses have been placed against the main outer wall of the building, probably to support the thrust of a vaulted roof. Mr. Miller suggests that this chamber may have been employed for the *armamentaria* of the fort, following a similar arrangement in the *Praetorium* of Lambesis. The remains of the eastern granary were considerable. It had as usual heavy buttresses, dwarf walls to support the floor, a loading platform at one end, and one, at least, of its narrow windows or air inlets, while in the interior there were preserved the remains of a kiln, a feature noted at Housesteads, but not so far in any Roman fort in Scotland. The plan of the Commandant's House, with its central courtyard surrounded by a covered ambulatory from which access was obtained to the rooms, is remarkably complete. In this building also the provision of a kiln was noted.

At Balmuildy there was a bathhouse inside the fort as well as one outside. At the north-east angle of the fort lay a small bath of a simple rectangular plan, of which the whole outline could be easily traced. This building had five chambers, of which four appear to have been provided with hypocausts. The main entrance must have been from a paved courtyard on the south. At Castlecary also, a bathhouse stood within the fort in close proximity to the east wall, but probably, if we may judge from General Roy's plan, it was a more elaborate construction. The fort bathhouse at Balmuildy was placed against the wall. The position of the building itself gives a valuable indication of the height of the fort wall, seven and a half feet wide at its base. To afford the necessary headroom the structure must have stood eight or ten feet above the ground; probably, as Mr. Miller suggests, it had a flat roof which formed part of the rampart walk, but the wall itself, though doubtless reduced in thickness, would be carried higher to form a breastwork for the protection of the defenders. Mr. Miller extracts from the changes and alterations noted in the foundations of this building an interesting

chapter in the history of the fort, while the find among the ruins of an altar dedicated to Fortune by a tribune CAECILIUS NEPOS comes to remind us once more that probably a good deal of the lighter side of life on the frontier was associated with the bathhouses.

The barrack buildings appear to have been of wood. Only one of these, a block situated in the Praetentura, had been uncovered when the excavations were brought to a close. The lines of postholes, which were all that remained, indicate a long building divided longitudinally, or two long narrow structures set back to back with a narrow passage between. Unfortunately the results obtained add nothing to our knowledge of the internal arrangement of this type of structure, nor was any inscription brought to light which gives a definite indication of the garrison which held the fort. Mr. Miller in reviewing this problem bases his views upon the correspondence of the six larger blocks with similar structures at Housesteads, Gellygaer and elsewhere, and concludes that they were probably *hemistrigia*, each designed to accommodate a century, while he suggests that the two smaller blocks in the Retentura were stables; the whole buildings accommodating a *cohors quingenaria equitata*. The question is discussed in an interesting and scholarly way, but further evidence is admittedly necessary.

The only building which was discovered outside the fort was a bathhouse in the annex already referred to. It lay beyond the rampart at the south-east corner. It was considerably larger than the bath within the walls, and the plan, with its cold bath, its hypocausts, its furnaces, is very complete. The presence of a bathhouse on the outskirts of a Roman fort is a common feature, but at Balmuildy its position is peculiar, for it had been placed almost under the shadow of the fort wall and over the filled up ditches. It stands in alignment with the defences of the annex rather than with those of the fort. It is suggested that its alignment was determined by structures already erected in the annex, and that crowded dwellings in this area may have been the reason for its position wedged against the rampart of the fort. No doubt the ditches of the fort were the first stage in its construction, to be followed by the building of the wall. It is possible that with this main feature of the defences completed, the ditches on the side covered by the annex were no longer regarded as of importance, but granting all this the position of the building is puzzling.

In every fort excavated in Scotland signs of change and reconstruction have been noted, and Balmuildy was no exception to the rule. The central building and the Commandant's house both showed signs of alteration. The bathhouse in the fort had at one period been destroyed, then to some extent restored, and finally a second time wrecked and its ruins levelled with the surrounding area. The annexe bathhouse appeared to have been carefully demolished, and the whole superstructure removed at some period before the final abandonment of the fort. As the buildings of the fort are clearly Antonine, all the vicissitudes indicated by the demolition and reconstruction of buildings must have taken place during a period of about forty years, which had its beginning with the erection of the vallum under Pius about 142, and its ending with the abandonment of Caledonia early in the reign of Commodus. In the course of its occupation the fort appears to have suffered two disasters—the first in the period of the Brigantian uprising, possibly about 155 or soon after; the second Mr. Miller places late in the occupation, perhaps about 170. The evidence of Balmuildy thus confirms the conclusions reached by Dr. Macdonald from his study of the structural remains at Rough Castle and at Castlecary, and proves once more how precarious was the Roman hold beyond the great wall.

While the excavators at Balmuildy were fortunate in finding definite remains of buildings, the harvest of smaller relics was comparatively meagre. Among these the fragments of pottery formed by far the largest proportion. Very few dishes were capable of restoration, nor was the soil very favourable to their preservation, but Mr. Miller has subjected his finds to most careful analysis. The fragments of Samian exports from Lezoux and from the East Gaulish potteries are admirably illustrated, while the types of vessels in coarse ware are presented in an excellent series of sectional drawings; indeed in no report hitherto published has the pottery of the comparatively short occupation of the Antonine Limes been so thoroughly illustrated. At Balmuildy the site dates the pottery; the limits of occupation into which practically the whole of it must fall are sufficiently well ascertained. Its value, therefore, chiefly emerges when it can be applied to fix the chronological position of sites when the evidence of occupation is less definite, but the Balmuildy shards convey to us some valuable indications. The great bulk of the Samian dishes came from Lezoux, and the decorated ware is of

the types associated with the stamps of such potters as CINNAMVS and DIVIXTVS. It seems certain that the most of their work belongs rather to the reign of Pius than later. The wares of Rheinzabern and the East Gaulish potteries, dating from the reign of Marcus or later, are much less fully represented. It would seem that the import from Gaul, obviously active in the earlier part of the occupation, was gradually diminished and not improbably in the troublous times which preceded the final disaster it came to an end. On the other hand, in the coarser pottery, the continental types which were in vogue at the beginning of the occupation early disappeared, to be replaced by dishes produced from local kilns, possibly situated in the region of the Southern Wall. Mr. Miller notes that of the stamps found upon the mortaria, eight can be recognised as occurring elsewhere, none of them outside Britain ; further, that the Antonine stamps found in the north are hardly to be met with in the south. Probably to the same replacement of continental wares by local products are due the imitations of Samian forms in red or yellowish red ware which were met with.

From all of the three forts previously excavated in the vallum, Rough Castle, Castlecary, and Barrhill, we have some trace of an Agricolan occupation, and similar indications might well have been expected at Balmuildy, but of Agricolan fortification no trace came to light. Is it possible that notwithstanding the trenching of the ground the Agricolan ditches are still to be found in the deeper levels of the site ? We have scanned the illustrations of pottery with care, but certainly the Flavian types which are common at Newstead, Camelon, and Inchtuthill are almost entirely wanting at Balmuildy. The Samian potters' marks are all of them Antonine. Of the decorated fragments, while one or two of them recall designs of the early period, they appear to be survivals of patterns, and can be definitely associated with second century potters. The large heavy mortaria, Plate XLI. (1) ; the ' screw neck ' flagons, Plate XLIII. (2) and (3) ; the carinated bowls, Plate XLVII. (1), are all suggestive of the Flavian period. It is possible that they are survivals. It must not be forgotten, however, how scanty are the shards dating from the Agricolan occupation which have come to us from the forts hitherto excavated on the Limes.

Mr. Miller combines the outlook of the scholar with the discerning eye of the trained excavator. We could wish that some of the lost opportunities of earlier years, such as the site of

Camelon, could be regained to be entrusted to his capable hands, but the forts of the Antonine vallum offer a wide field for further investigation, and we trust that before long the opportunity may be given to him of contributing another chapter to the history of Roman Caledonia.

The thanks of archaeologists are due to the Glasgow Archaeological Society who planned the work at Balmuildy, and to Mr. Miller for his excellent report.

JAMES CURLE.

The Death of Lord Russell, 1585

WHEN, in March 1585, the 'Catholic League' was proclaimed the fate of Protestant Europe appeared to hang in the balance. William the Silent had been assassinated in July 1584, and by the end of July 1585, all Brabant, with the exception of Antwerp, had fallen into the hands of Parma. The Netherlands, 'a pistol pointed at the heart of England,' seemed foredoomed to a Catholic rule, and Elizabeth, whose Protestant inclinations could no longer be a matter of doubt, sent hastily to James asking for the formation of a Protestant League, offensive and defensive, which should be able to combat that of Philip and the Duke of Guise. Although this League was accepted by a Convention of Estates which met at St. Andrews (July 31st, 1585),¹ its realisation was postponed by an unexpected trouble which arose upon the Borders.

On the 27th July Sir John Foster, warden of the Middle March, had met Sir Thomas Ker of Fernihurst, warden of the opposite Scottish March, at Cocklaw on the Teviotdale border, in order to hold a customary 'day of trew.'² As usual a proclamation was made to the effect that no man should harm other by 'word or deed or look,'³ but nevertheless a fracas arose wherein Lord Francis Russell, son of the Earl of Bedford, was slain. An impartial survey of the evidence available tends to prove that the whole affair was both unpremeditated and accidental;⁴

¹ Vide *Calendar Scottish Papers*, viii. p. 43, No. 43; cf. also *ibid.* vii. p. 661, No. 632.

² A MS. account of a 'day of trew' or 'march day' is given in MSS. Cott. Calig. C. viii. No. 211, f. 256 verso (dated Oct. 1585). A transcript of a similar document is given in *Border Papers*, i. p. 194, No. 343 (dated Aug. 1585). See also Carlisle, *Leges Marchiarum*; Balfour, *Practicks*, pp. 602 *et seq.*; *A.P.S.* ii. 35, 303; *R.P.C.* i. 149; ii. 357, 569-70; iii. 82, 84, 325, 621-623.

³ Cf. Camden, *Elizabeth*, sub anno 1585.

⁴ Cf. Mendoza's Report, *Spanish State Papers*, iii. No. 406, p. 545. Possibly the pair of spurs was either stolen or a dispute arose about the price. Some such story as this is the most likely interpretation.

but the subsequent negotiations, viewed as a study in Elizabethan diplomacy, are illuminating, since they clearly show the manner in which the English Queen endeavoured to turn this small affair to serve her greater ends—the overthrow of Arran and the return of the banished Lords.¹

Elizabeth had long endeavoured to bring James into friendly relationship with the conspirators of the Ruthven Raid, but without success.² James, doubtful of the ultimate trend of the Elizabethan Church Settlement, was endeavouring to sit upon two stools,³ but all failure was attributed to Arran, who possessed the King's ear,⁴ and who, after the unsuccessful attempt of April 1584, had instigated a reign of terror against any who should communicate with the banished Lords.⁵ In addition to his attitude towards these Lords, Arran was regarded in England as privy to all plots, real and imaginary, between James and the Catholics (especially Father Holt), and by Elizabeth he was absolutely mistrusted.⁶ It was felt that he was a stumbling block to any perfect realisation of the Protestant League.⁷ Assassination had been proposed by Bellenden as a last resource in June 1585; but Wotton shrank from such measures, and before the end of six weeks a weapon was found such as both Elizabeth and her ministers loved to use. The death of Russell came opportunely 'as a handle' to be employed for the long desired ruin of Arran.

The first report of the meeting at Cocklaw with its tragic conclusion is to be found in a letter from Foster to Walsingham, dated July 28th—that is the day following.⁸ In this letter it

¹ It must not be forgotten that both of these were also desired by the English party in Scotland. Cf. Calderwood's 'tempests and plagues' (*History*, iv. p. 377-8).

² *Ibid.* iii. pp. 722 *et seq.*

³ Cf. *Calendar of Spanish State Papers*, iii. Nos. 370, 371, 381 and 382.

⁴ 'They do not stick to say that the King beareth the name but he (sc. Arran) beareth the sway'—Hunsdon to Burleigh (Aug. 1584), *cit.* Lang, *History*, ii. p. 309.

⁵ Home of Argathy and his brother were executed for communicating with one of the exiles on a matter of business (Spottiswoode, ii. p. 321).

⁶ It must not be forgotten that Elizabeth was gradually drawing her web tighter round the imprisoned Mary. The Master of Gray, hating Arran as a rival to the King's favour, undoubtedly did all he could to poison the English Queen's mind both against Mary and Arran. His visit to England gave him ample opportunity to play the double game. Cf. Calderwood, iv. pp. 171-191; Spottiswoode, ii. p. 323, 4; *Papers relating to the Master of Gray* (Bannatyne Club) pp. 1-44.

⁷ Cf. the later charges against him, including a threat to break the League and secret dealings with France (*Calendar Scottish Papers*, viii. Nos. 60 and 61).

⁸ *Border Papers*, i. No. 330, p. 188.

is important to note (1) that Russell came to the meeting against Foster's will and for particular causes of his own; (2) that when the tumult arose about a 'little pyckery' Russell went aside to his own men and there was shot and 'none but him'; (3) then with the opposite warden order was restored and 'we parted quietly owte of the feeld.' This letter reads as a calm orderly report sent in for information. The fact that Russell came by his own choice and against Foster's will is further proved by Foster's letter of July 31st;¹ and in his letter to Wotton dated August 5th, Walsingham expressly acknowledges not only that the presence of Russell was unexpected but also that the English warden (Foster) could discover no reason for supposing the matter was not accidental.²

Despite all this, however, Elizabeth and her ministers at once sought for proof, real or supposititious, against Arran.³ Wotton, without any evidence whatsoever, promptly played upon the King's fears. James 'shed tears like a newly beaten child' and 'cast himself upon his bed, and tumbling upon it, said, that it had not greeved him so muche if ten thowsand men had entered in the countrie and spoiled to Edinburgh.'⁴ In all probability James was thinking chiefly of the £5000 per annum which had been promised him and which he saw he was likely now to lose, and perceiving this Wotton did not hesitate to bring forward the name of Arran, with such success that he was able to write in his same report 'The more her Majesty takes this treacherous fact to heart, the more assuredly will Arran be delivered into her hands.'⁵ That the custody of Arran was desired more than anything else is clearly to be seen in Wotton's letter of the

¹ *Calendar Scottish Papers*, viii. p. 47, No. 45.

² *Ibid.* viii. p. 56, No. 60. See also Scrope to Walsingham (August 12)—'as to Lord Russell's death—which Sir John Forster signified to me to be accidental before I wrote to you on the 29th ultimo . . .' (*Border Papers*, i. p. 192, No. 338).

Calderwood states that both Fernihurst and Ker of Ancrum told Russell they were sorry he had come that day (*History*, iv. 378). Does this mean that they had in mind some affray, but did not wish to involve Russell? Calderwood's story, however, is difficult to believe.

³ Cf. 'Knowing how aptly this opportunity will serve to work Arran's overthrow . . .' (Walsingham to Wotton (Aug. 5), *Cal. Scot. Pap.* viii. p. 56, No. 60.)—In the same letter acknowledging the matter to be accidental!

⁴ Calderwood, iv. 379; *Cal. Scot. Pap.* viii. p. 42, No. 41; Thorpe, *Calendar*, i. p. 502, No. 102.

⁵ *Cal. Scot. Pap.* viii. p. 42, No. 41 (July 29). Cf. too, 'the good managing of this matter . . . will result in Arran being sent to England for trial' (Wotton to Walsingham (July 31), *ibid.* viii. No. 46).

following day—If Elizabeth wishes it James will send Arran into England. His absence should prove his ruin; but in any case matter might be found to keep him in prison three or four years even if innocent of the death of Russell.¹ James, unable to sleep or eat through 'the misshap of good fortune for the league,'² committed Arran to ward in the castle of St. Andrews,³ and meanwhile Wotton sought far and wide for evidence which could be twisted or turned into proof of the prisoner's guilt.

Possibly at the minister's prompting, Foster was induced to write a report of the affair—a report which contrasts strangely with his first letter. The Scotsmen came in 'order of battell with ensigne penselles fyfe and drommes'; then when the wardens were quietly sitting calling their bills 'the partie of Scotland seinge the tyme serve for their former devise, sodenly brake, strykinge up a larome . . . and gave the charge upon us—in which charge the Lord Russell was crewellie slaine with a shott.' Neither did they pass quietly out of the field as at first we had been led to believe, but were pursued 'fowre myles within the realme of Englande,' the Scots taking 'sondrye prisoners.'⁴ Two days later Foster sent one, Robert Carvel, to describe the manner and circumstances of the affair;⁵ but Carvel was not an eye-witness and being only 'instructed' his testimony did not carry sufficient weight for Wotton's plans, since on August 13th we read, 'No man has yet come from Sir John Foster, who was present at the slaughter. Robert Carvel was, indeed, instructed somewhat by him; but Carvel's words do not carry that credit which the words of another, in my judgment, would, who had been present at the affairs; therefore I have written to Sir John Foster to send hither some such person at once.'⁶ This hesitation on the part of Foster to send a creditable eye-witness, together with the wide interpretation which can be put upon the word

¹ *Cal. Scot. Pap.* viii. p. 42, No. 42 (Wotton to Walsingham, July 30).

² *Ibid.* viii. p. 48, No. 48 (Laird of Arbroath to James Hudson, July 31).

³ Thorpe, *Calendar*, i. p. 502, No. 103. Arran found caution that he would 'underly the law for art and part in the slaughter of Russell' (*R.P.C.* iv. p. 1-2).

⁴ *Border Papers*, i. p. 189, No. 331 (dated July 29). Cf. also *ibid.* No. 335, containing an identical report and dated July 31; also Thorpe, *Calendar*, i. p. 502, No. 105, dated July 31; also *Cal. Scot. Pap.* viii. No. 45, dated July 31. There can be no doubt that this fuller and altered report is posterior to that of July 28. It is this *second* report which has generally been relied upon—cf. both Camden and Ridpath. Calderwood says 'some twentie shott' (*History*, iv. p. 378), but he is the only authority for this.

⁵ *Cal. Scot. Pap.* viii. p. 47, No. 45.

⁶ *Ibid.* viii. p. 66, No. 75.

‘instruction,’ speaks strongly in favour of the truth of the first report and would almost imply an inability to prove the second.

On August 23rd the story of the intercepted ciphers first appears and the anger of Fernihurst against Russell.¹ Foster writing to Walsingham on September 15th, definitely states that the murderers in his opinion are Arran and Fernihurst, and mentions a conference between the two at ‘Kenneale fyve or sixe dayes before,’ where Fernihurst definitely prepared his forces to serve his purpose.² Strange that such plans could have been made when Russell only appeared at the meeting unexpectedly and by chance !

Little so far, despite all this intriguing, had been achieved. True, the Kers had been put to the horn,³ but in reality that counted for little beyond a mere formality ; and on August 6th Arran, pleading his wife’s illness, had been removed to his own house.⁴ Wotton writing to Walsingham on the same day is compelled to confess that the King’s affection for Arran is gradually supervening,⁵ and a week later despite all his ‘aggravation’ of the matter he now doubts whether the King will deliver Arran to Elizabeth for trial.⁶ On August 19th Sir John Foster’s second witness, Fenwick, accuses Fernihurst before the King and his Council ; but again Wotton has to appeal for ‘trustworthy witnesses’ !⁷ And on August 21st it is agreed to submit the whole question to commissioners of the two countries.⁸

The commission with many postponements and delays at last sat, but it achieved nothing. At the very outset Christopher Dacre expresses its ‘doubts’—‘Little proof against Arran, saving presumptions from Farnyhurst’s son being with him lately.’⁹ Neither could a Scots witness be found to give evidence against Fernihurst, and according to the Border Laws only the evidence of a Scotsman can be taken against a Scotsman, only the evidence of an Englishman against an Englishman.¹⁰

To one unacquainted with Elizabeth’s character it would appear as though she had lost her chance beyond recovery.

¹ *Border Papers*, i. p. 193, No. 341.

² *Ibid.* i. p. 196, No. 348.

³ *Ibid.* i. p. 191, No. 336.

⁴ *Cal. Scot. Pap.* viii. Nos. 62 and 63. This after only six days’ ward.

⁵ Cf. *ibid.* viii. p. 59, No. 63.

⁶ *Ibid.* viii. p. 65, No. 75.

⁷ *Ibid.* viii. p. 70, No. 80.

⁸ *Ibid.* viii. p. 74, No. 85.

⁹ *Border Papers*, i. p. 203, No. 363.

¹⁰ *Ibid.* i. Nos. 343 and 363. Also Camden, Balfour and Carlisle as cited on page 181, note 2 *supra*.

Arran should have been claimed for trial in England in the very first few days before James had time to recover his 'wits' and allow his affection for Arran again to supervene. To a certain extent this is true; but Elizabeth still held one more card—the banished Lords. Already she had been allowing these greater liberty and greater favour,¹ and on August 25th Wotton after his talk with the Master of Gray had written to Walsingham, (1) as long as Arran is in favour it will be impossible to bring home the banished Lords by fair means; (2) unless they are restored the League cannot be sure; (3) the Queen ought therefore to let slip the Lords who, if they have some support with money, will be able to take Arran and seize the King's person.² On September 22nd Wotton writes that he is in fear of his life. The Scots have little sense of honour! Unless Elizabeth send the banished Lords her cause is lost. The King is completely under the influence of Arran.³ It is difficult to say how much was actual fear, how much diplomacy. Certainly Wotton was only reaping a just reward to go in fear of his life; but on the other hand he could now see that the 'letting slip' of the banished Lords was imminent and such an affair would better prosper were he absent. Matters now speedily came to a head. By the night of October 15th Wotton was safe in Berwick,⁴ and on the 17th October the banished Lords, including Angus, Mar, and Glamis, appeared there. Arran made some show of resistance at Stirling, but seeing that his cause was hopeless he fled into the West, was proclaimed a traitor, and his career came to an end.

The negotiations between the commissioners still lingered on. Another proclamation put the Kers to the horn in July 1586;⁵ but Elizabeth had now achieved her end. It was no longer necessary for Wotton to wrack his brains for evidence, or for Foster to 'prepare' his reports. The question of the death of Russell gradually drifted into oblivion.

W. C. DICKINSON.

¹ Cf. the letters from the Archbishop of Glasgow (*Cal. Scot. Pap.* viii. Nos. 87 and 88).

² *Ibid.* viii. p. 79, No. 94; cf. also p. 87, No. 103.

³ Wotton to Walsingham, *ibid.* viii. p. 108, No. 133.

⁴ *Ibid.* viii. p. 129, No. 170.

⁵ *Ibid.* viii. p. 579.

Some Relics of Alexander Seton, Earl of Dunfermline

THE present writer has recently become possessed of some books and a document relating to Alexander Seton, Earl of Dunfermline (1555-1622), and Chancellor of Scotland from 1605 until his death in 1622.

The document in question is the Commission issued by King James VI. to the Chancellor in 1612 directing him to summon the Scottish Parliament. It is written on a sheet of vellum measuring 377 mm. × 230 mm. The Great Seal of Scotland in red wax, measuring 140 mm. in diameter, is suspended from the Commission by a red ribbon, which is intact: the Seal itself is in perfect preservation, as is also the Commission. A description of the Seal will be found in W. de G. Birch's *History of Scottish Seals*, vol. i. pp. 78-79.

The document has on the back an endorsement in the autograph of the Chancellor as follows:

Erle of Dunfermeline his Commissioun for halding the parliament in anno 1612.

It is unnecessary to reprint the actual text of the Commission, as it is printed *in extenso* in the *Acts of the Parliaments of Scotland*, vol. iv. pp. 465-466 (1816).

The history of this interesting document since the time of the Chancellor is not known, but it probably remained at Fyvie Castle for some time, possibly until the attainder of the Earl of Dunfermline in 1690.

The late Mr. George Seton, in his Memoir of 'Alexander Seton, Earl of Dunfermline,' refers on page 158 to his Libraries at Pinkie and Fyvie, which were valued in the 'Inventar' at the time of his death at £1333 6s. 4d., and he mentions one volume, *Discours Chrestiens de la Divinité, la Creation*, by M. Pierre Charcon, Paris, 1604, bearing the book-stamp of the Chancellor and formerly in the Gibson-Craig collection. Mr. George Seton subsequently bought the volume, but apparently

he knew of no others. Eleven books have now come to light, all definitely associated with the Chancellor and bearing one or more of his various signatures. They range in date from 1551 to 1614 and show the wide range of the Chancellor's interests.

1. (a) *Discorsi di Niccolo Machiavelli Cittadino*. In Firenze, 1551. 8vo. pp. [4]+156. (b) *Il Principe*. Ditto. (c) *Della Arte della Guerra*. Bound together in one volume in vellum. On the title page is an inscription *R. Lord Setoun*. This shows that the book first belonged to his elder brother, Robert, Lord Seton, afterwards first Earl of Winton. The last fly-leaf contains in the Chancellor's hand two mottoes in Italian.

2. *Luciani Samosatani Operum*. Tomus III. Basileae [1563]. In Greek and Latin. 8vo, vellum. On front fly-leaf in the Chancellor's hand: *Emptus 25 solidis. Alexander Lord of Vrchhart*.

3. *Scotorum Historiae a prima gentis origine*. This is Hector Boece's History with the continuation of Ferrerius. Paris, 1574. Folio. In original boards, covered with calf. At the top of the title page the autograph *Alexander Lord Fyvie*.

4. *Monumentorum Italiae . . . libri quatuor a Laurentio Schradero*. Helmstadt, 1592. Folio. With autograph at the top of the title page: *Alex^r Setonius. Dunfermelyne*. The same autograph repeated below the centre of the page.

5. *Elucidatio Fabricae Vsusque Astrolabii, Joanne Stolferino Iustingensi authore*. Parisiis. Apud Hieronymum de Marnef. 1576. 8vo, vellum. On title page the Chancellor's signature *Alexander Seton*. This was probably one of his earliest purchases. He was using that signature up to about 1586.

6. *Christophori Clavii Bambergensis e Societate Iesu. Epitome Arithmeticae Practica*. Romae, 1583. 8vo, vellum. On title page, the Chancellor's signature *Dunfermelyne*. On the fly-leaf the Chancellor has written some Latin verses.

7. *Inventaire General de l'histoire de France*. Par Jan de Serres. A Paris, 1599. 16mo, vellum. On title page the Chancellor's name, *Alex^r Seton, Lord Fyvie*, apparently but not certainly in his autograph.

8. *Photii Bibliotheca . . . opera Andreae Schotti, S.J.* Augs-burg, 1606. Folio, bound in leather. Stamped on both sides with the Seton crest in gold (a crescent and star of five points) within an oval line.

9. L. *Annaei Seneca Philosophi*. Paris, 1607. Folio. In the original vellum binding; gold stamped on both sides with the Seton shield and supporters surmounted by an earl's coronet under a helmet of knighthood carrying the crest with Motto SEMPER, within an oval band inscribed: *Alexander Setonius Fermelinoduni com. Fyvaei dom. et ct. Scotiae cancellarius*.

10. *Los siete libros de la Diana De George de Montemajor*, in Spanish, with French translation. A Paris, 1613. Press of Anthoine de Brueil. 8vo, bound in calf. On title page two signatures of the Chancellor: *A. Seton. Dunfermelyne*.

11. *Christophori Clavii Bambergensis e Societate Iesu. Epitome Arithmeticae Practicae*. Mainz, 1614. Press of Joannes Volmar. 8vo, vellum. On title page the Chancellor's signature *Dunfermelyne*.

Reference may also be made to one other volume, which belonged to the Chancellor's father, George, 7th Lord Seton, and which in all probability passed into the Chancellor's Library. It is a fine folio *Historiae Augustae Scriptores Latini Minores*. Tomus Alter. Frankfort, 1588. On front and back covers are the arms of George, Lord Seton, with his motto 'Hazard zit forward' blind-tooled.

It is not improbable that other volumes, which belonged previously to the Chancellor and were at Fyvie, are contained in other collections in Scotland and elsewhere.

The Aberdeen University Library contains a copy of Erasmus with the Chancellor's signature: '*Alex Setonius. Dunfermelyne*'; and the Library of Trinity College, Cambridge, contains a ms. of Fordun with his signature.

Are other books bearing evidence of having formed part of the Library of the Earl of Dunfermline known?

WALTER SETON.

William II. and the Stuarts¹

IN 1641 Frederick Henry of Orange, taking advantage of the difficulties in which Charles I. was already becoming involved, succeeded in bringing about a marriage between his son, William, and Mary, the eldest daughter of the English king. He hoped that the splendour of such an alliance would help him in his efforts to strengthen the political position of his family. This in itself roused the suspicions of the regent-class of Holland, but the aspect of things was made even worse by the fact that in the ensuing years the Prince continually tried to induce the Dutch Republic to support the king's cause in the English civil war, not so much out of gratitude for the marriage which had already been arranged, as because Charles's wife, Henrietta Maria, held out hopes of yet a second marriage, between the Prince of Wales and Frederick Henry's daughter, Louise Henrietta. The negotiations for this union came to nought in 1646, when Charles I. definitely suffered reverse in the war. In the meantime these dynastic tendencies of the Stadholder, which went hand in hand with his policy of adherence to the French alliance against Spain, had contributed more than anything else to the revival of the opposition against him of the States, particularly, but not alone, in Holland. The situation was all the more serious for Frederick Henry, especially when he was unable to prevent the defeat of the Stuart cause, because in this difference between the house of Orange and the States, public opinion was mainly on the side of the States—an unusual occurrence in the history of the Dutch Republic. Commercial interests would have been ill served by war with England and, for political and religious reasons respectively, the cause of the parliament was popular with 'Libertines' and Calvinists alike.

The failure of all his plans, the obstinate opposition of the States of Holland, premature old age and illness so much

¹ See also *Frederick Henry of Orange and Charles I.* in the *English Historical Review*, July 1923. It, as well as the present article, are portions of a larger scheme which I hope to publish in book form under the name of *Orange and Stuart*.

discouraged the Prince that eventually he not only abandoned his attempts to obtain practical help for Charles I., but even submitted to the wish of the States, who were urging peace with Spain in defiance of the stipulations of the treaty with France of 1635, whereby neither of the two States was to conclude peace without the other.

William II. had not wanted to give way as his parents had done, and when his father died, March 1647, it might have been supposed that he would still manage to accomplish something, for peace with Spain had not yet been concluded. He had in fact, while his father was still alive, been in close communication with the French ambassadors, who did not fail to appeal to his ambition, giving him to understand that he was dependent on France for his power, and that France was prepared to do everything to maintain, nay even to advance, his interests.¹ When he became Stadholder this relationship naturally became even more intimate, and the French vigorously urged upon him to prevent a breach of the treaty of 1635. But although the young Prince made a few attempts, which proved that he still cherished the plans his father had abandoned in despair, and was anxious to avert a peace which would mean their complete breakdown, his French friends soon evinced their bitter disappointment in him. It was clear that '*ce bon petit Prince*,' as De la Thuillerie scornfully calls the twenty-one-year-old youth,² could not stand up against the States of Holland. So about this very time peace was made with Spain. But strangely enough no sooner was this happily accomplished than William II. seemed to throw off his indifference. Brasset records, on the 13th July, 1648, a firm resolution made by the Prince two days previously, to apply himself seriously to business from that day onward;³ and although at first sight one is inclined to smile at a promise of amendment announced so emphatically beforehand, it is certain that during the two years of life that still remained to him, William II. cut a very different figure. Although there are reports of his dissolute life even in this latter period, there is no further mention of indifference, of lack of ambition or of courage. On the contrary, from that time forward William II. threw himself with the impetuosity and rashness of youth into the task

¹ *Archives de la Maison d'Orange-Nassau*, ii. iv. 180.

² *Ibid.* p. 235, 5th August, 1647.

³ *Ibid.* ii. iv. p. 262.

of undoing the peace and resuming with France, not only the plans for partitioning the Southern Netherlands, but also the scheme for the restoration of the Stuarts.

There appeared to be more hope for the Stuarts in 1648 than there had been in the years immediately preceding. The increasing power of the Independent Party, who had the disposal of the army under Cromwell and Fairfax, and who were opposed to the introduction of a stiff-necked Calvinist theocracy by the Presbyterian Parliament, seemed to offer a good chance to Charles I. in his captivity. After having in the first place made advances to the Independents, he unexpectedly attached himself to the Presbyterians, and a new civil war broke out in which Presbyterians and Royalists joined forces. Their main hopes were centred in a Scottish army under the Duke of Hamilton, but there were serious disturbances in the South of England as well. In the beginning of June, a number of ships belonging to the Parliamentary fleet declared for the King, and sought a refuge on the roadstead of Helvoetsluis. At first the young Duke of York, who had lately fled from England, tried to secure the command of this fleet, but the lack of unity among his counsellors caused such confusion that the Prince of Wales was called in to help. He arrived at Helvoetsluis on the 21st July, and to his brother's great indignation deprived him of his command. The Prince of Wales had spent two years in France, where his mother was still continuing her vain efforts to induce Mazarin's Government to render some effectual aid. Mazarin's main idea was to prevent any party in England from achieving a complete victory which by restoring unity might renew England's power, and for this reason he would probably have liked to support the resistance to the Independent army, which he feared most of all. But just at this time, owing partly to the defection of the Dutch Republic, partly to the domestic disturbances of the Fronde, France was in no position to spare money or troops for an English expedition. Once more all the hopes of the Royalists were centred in a Prince of Orange.

An envoy from the Scottish Committee of Estates, dominated at that time by the Royalist-Presbyterian party of Hamilton, had just been obliged to send home a report that the States would not hear of an alliance with Scotland against the English Independents—no wonder when it is remembered that even loyal adherents of the Prince of Orange, as we shall see presently, placed no faith (and rightly) in the power of the Hamilton party

—and that William II. himself was not equal to his position.¹ This was about the time of the Prince's resolve to begin a new life. It soon became clear, in spite of the pessimism of the Scot, that he was ready to render all the help that lay in his power. It is true that he could not move the States of Holland and that he frankly admitted this to his brother-in-law, warning him not to expect any action which should be too directly opposed to the declaration of neutrality, and also not to count on financial support from the States.² It would have to be the kind of help his father had always given—whereby he had almost ruined himself without averting the fall of the luckless family. Together with that same doubtful Duke of Lorraine on whom hopes had been set even in Frederick Henry's day, the Prince raised troops, which were encamped for the time being at Borcum, and for whose use he chartered a couple of ships in Amsterdam. This transaction took place in consultation with the English Royalists.³ At the same time the Prince arranged for the purchase of munitions for the Scottish army,⁴ up to a sum of 30,000 francs.

This was the first business into which he threw himself heart and soul after his resolve to improve his manner of life, and his own servants observed it with great concern. A man like Heenvliet served without offering criticism and was content if he won the gratitude of the Stuarts.⁵ But the letters in which De Wilhem, member of 'His Highness's Council,' who was commissioned to carry out the work, describes his activities to his brother-in-law, Huygens, are one long lamentation. De Wilhem ventured to warn his master against 'getting more

¹ *Hamilton Papers* (Gardiner, 1880), p. 228—letter of Sir W. Bellenden from Amsterdam, 9th July, 1648 (presumably O.S.): 'At all time of my acces to the P. of Orange I did moue him what was to be doin be ws for the conjunction with the Staits, but the trewth is that he is not so ripe and painfull in and for business as his condition doeth requier.'

² Memorandum of William II. for the Prince of Wales, Sept. (?) 1648, *Archives*, ii. iv. p. 267.

³ This matter is known from the letters of De Wilhem to Huygens in *Archives*, ii. iv. p. 263 ff.; published more fully by Worp, *Briefwisseling van Huygens*, iv. p. 491 ff. (Rijks Geschiedkundige Publicatiën). Further, a letter of Sir Edward Hyde in *Clarendon State Papers*, ii. p. 455 ff. He gives the number of troops as 900; De Wilhem 500.

⁴ De Wilhem received a receipt from Bellenden for these munitions.

⁵ At a later date the Prince of Wales expressed this gratitude most emphatically. Letter from St. Johnston, 21st Jan. 1651, *Rawlinson Letters*, Bodleian Library. From the moment that they had first met in Helvoetsluis, says the king (as he then was) Heenvliet's services had been inestimable.

deeply involved in the English labyrinth,' but no attention was paid to him.

In particular he complained most bitterly of the incapacity and intractability of the servants of the Prince of Wales and of the infinite confusion prevailing among his counsellors.¹ Culpepper was the man who had the most influence with the Prince of Wales in those days, and predominance on the whole was with the party that, following the lead of the Queen and her confidants, looked to the Presbyterians for salvation. The strict Episcopalians, such as Sir Edward Hyde and Sir Edward Nicholas, it is true, had already, at the King's orders, attached themselves to his son, but did not succeed in making their influence much felt at that time. It is certainly remarkable that De Wilhem, as strict a Calvinist as any of the Prince of Orange's followers, was so little impressed by the policy of the Presbyterian group. In any case his judgment was very correct. He knew that little reliance could be placed in the Hamilton party, which was losing ground even in Scotland, and he rails at the imprudence of exposing the Prince of Wales in such a hopeless enterprise: for after fruitlessly cruising about the English coast for a week or two with his ill-disciplined fleet,² the young Charles—he was eighteen at the time—made preparations to go and place himself at the head of the Scottish army. But he was still in The Hague when the news came that there was no longer a Scottish army: Cromwell had annihilated it at Preston (end of August 1648). The 30,000 fr. worth of munitions too, which had just been despatched, would now, says De Wilhem, probably fall into the enemy's hands; the troops at Borcum were disbanded, and the Prince of Wales with his ill-assorted retinue—Catholics, Episcopalians and Presbyterians—the English, the Irish and the Scottish party—lingered on at The Hague at the expense of his brother-in-law of Orange,³ his fleet blockaded at Brill by a

¹ 'Pleust à Dieu que nostre maistre ne s'engageast plus avant avec ces gens sine luce, sine cruce, sine deo; jamais de ma vie je vis un tel désordre et confusion'; 18th September; this is only to be found in Worp.

² According to Eva Scott (*The King in Exile*, p. 51) it was again the generosity of the Prince of Orange which enabled this fleet to set sail; he had equipped it with three months' provisions. The writer, however, gives no source.

³ The Prince of Wales was received at The Hague in accordance with his rank, and entertained for the customary ten days at the expense of the States-General; the States of Holland refused to allow this term to be prolonged at the pleasure of the Prince of Orange (De Wilhem to Huygens). The young Duke of York, too, was still living at the expense of his brother-in-law. In order to relieve him, the

Parliamentary fleet under Warwick, and gradually disintegrating through lack of funds.

William II. had himself too energetic a nature not to be annoyed at the ease with which the English prince accommodated himself to his idleness.¹ As for the States of Holland they would not have been sorry to see the Parliamentary Admiral seize the opportunity and destroy the weaker Royalist fleet at one bold stroke,² but failing that, they could hardly do otherwise than observe neutrality. Soon afterwards Rupert Prince Palatine was placed at the head of this fleet, and he with his indomitable energy succeeded in preventing further decay, even though there was the greatest difficulty in finding money and making the fleet seaworthy again. All sorts of ambitious plans were built on the possession of this force—the last on which the Royalists could completely rely—but almost the only way in which Prince Rupert was ever able to use it, after he had set his course for Ireland early in 1649, was for privateering expeditions against English merchantmen, and this soon became the only source of income for young Charles in his exile.

The disaster at Preston had sealed the fate of Charles I. Scotland still maintained her independence: now that those Presbyterians who under Hamilton had thrown in their lot again with the Stuart cause were beaten, power was in the hands of the implacable Presbyterians under Argyle, who had no more in common with the Independents than the others, but entered into an alliance with them for the time being. But in England there was now no longer any power capable of withstanding Cromwell. In December 'Pride's Purge' expelled all the unruly elements from the Parliament, and in January the King appeared before his judges.

Duke of York went to France in December, while the Prince of Wales' court was curtailed as much as possible (Aitzema, vi. p. 575). According to Aitzema, vi. 782, William II. gave pensions to the lords of Charles II.'s court in 1649 of 2000 guilders each. Cf. also Carte's *Ormonde Papers*, i. pp. 199 and 209.

¹He was at the time of these decisions in Groningen. Thence on 15th September he wrote to Heenvliet that he had sent a letter to the Princess Royal for the Admiralty of Rotterdam in case the Prince of Wales might like to have a ship to go to Scotland. 20th September—apparently Heenvliet had in the meantime enlightened him as to Preston—he wrote the following characteristic words:

'J'ay receu vos lettres. Je voy que les affaires sont bien incertaines et qu'ils ne savent de quel bois faire fièche. Me semble qu'il vaut toujours mieux un Royaume (understand: one kingdom—Scotland) que rien, mais le temps perdu est beaucoup' (*Rawlinson Letters*).

²For at that time most people were still loyal parliamentarians, says Aitzema.

The Prince of Wales, who at the pleasure-loving court at The Hague, with his brilliant Palatine-Bohemian cousins and the beautiful sisters of his brother-in-law, Orange, had forgotten his political troubles amid gaieties, now had a rude awakening. On January 30th, Old Style (9th February, 1649, New Style), Charles I. was beheaded at Whitehall. The same day a solemn announcement was made by the Parliament that no man was to presume to claim the title of King of England.

The deed made a profound impression in the Netherlands. The nation, its own revolution already but a memory stored in the bloodless annals of the past, saw with horror 'the hosts of hell' building 'their throne in England's realm,' as Vondel expressed it. Even those who hitherto had been on the side of the Parliament, on grounds of freedom or of religion, even the clergy who could have but little sympathy with the Episcopalian and even Catholic tendencies of the Prince of Wales and his counsellors, hated the Parliament now. Such is the testimony of Aitzema,¹ and there is no doubt that it deserves every credence. Strickland, so it is said, dared not show his face in the street.² The clergy above all were vehement in their condemnation of 'the atrocious deed,' but for a long time past they had looked on the looming spectre of Independentism with the greatest uneasiness. The clergy of Zeeland, under the influence of Spang, and Voetius himself, were no less vigorous in their protests against Independentism, that is against religious tolerance, than against Episcopalianism. The religious sympathies of the Netherlands Calvinists were entirely with the Presbyterians, who had now suffered defeat in England. The odium theologicum is clearly seen in the address in which four Hague clerics felt it their immediate duty to offer condolence and comfort to the son of the King who had been deprived of his life. After violent manifestations of horror at 'this unheard of Parricide, that accursed destruction of the holy, anointed head, and that never sufficiently to be deplored murder of this one King of the Reformed Faith,' the reverend gentlemen declare that from this can be seen 'what it is to be an Independent.'³ But they were reprimanded very sharply by the temporal powers for their interference in politics.

For in the midst of the general excitement, the States of Holland were unyielding in their adherence to their guiding principle, that it was essential to keep on friendly terms with

¹ vi. p. 682.

² Eva Scott, *op. cit.* p. 73.

³ Aitzema, vi. p. 694.

the Parliamentary party, and all the more now that they had the whole country at their feet. Aitzema remarks cynically that the States party was absolutely determined to keep in with the winning side. Indeed it was a wise maxim, one which we have already seen the French Government establish as the unshakable *raison d'Etat*,¹ and one which was so obviously in the interest of the Netherlands, that the other commercial province, Zeeland, in spite of the Prince of Orange's influence there, went hand in hand with Holland in these days while all the other European powers too—with the exception of Sweden, where the somewhat unbalanced Queen Christina indulged in a short-lived outburst of noble indignation—took it as their guiding principle. France, indeed, with whom the Prince of Orange would so gladly have allied himself in order to set things right in England, was entirely powerless just at this time on account of its own Fronde risings.

However, it was certainly not only their inclination to *Realpolitik* that ruled with the States. These men, whose sympathies were actually as little with the religious aims of the Presbyterians as with those of their own Calvinist clergy, must have cherished a certain amount of secret admiration for the bold republicanism of the Independents. Aitzema himself cannot refrain from remarking on the folly of the public, who were now all 'full of compassion over the death of the King, *one* person: and they had looked on with dry eyes while thousands had lost their lives in England, Ireland and Scotland, during the English disturbances.'² And he refers to 'Libertines' who put awkward questions about the consistency of people like the Calvinist clergy, who were now so indignant and whose forerunners had, after all, offered armed resistance to their lawful king. No doubt, so he goes on, it was objected that the English Republic was only established by a small section of the House of Commons. But in the United Netherlands the revolution was not even begun by the States or by a section of any Parliament, but by a group of *canaille* at Flushing in Zeeland and at Enkhuizen in Holland.

All this does not alter the fact that the rise of the Independents, and their impressive judgment on the King, did more than anything else to bring about a great revulsion of public opinion in the Netherlands in regard to English affairs. The Calvinists, who had been in sympathy with the Parliament in its struggle with the King, were distinctly inimical towards the English Republic, and William II. might well think that a policy of

¹ See *Frederick Henry and the Stuarts* in *E.H.R.*

² vi. p. 685.

interference with the domestic affairs of Great Britain, although even now there were certainly no signs of any active desire for it, would be less unpopular than it had been in the days of his father, particularly as the Scottish Calvinists or Presbyterians, too, were once more reverting to the monarchy.

Yet here even from his point of view a serious complication presented itself. The Presbyterians, frightened by the danger of Independentism, were reverting to the monarchy, but Charles II. was by no means eager to meet them. He would no doubt have been ready to join the Hamilton party, although even that was not at all to the taste of the majority of his English advisers. But Argyle's party, which came into power after the fall of Hamilton, was considerably more obnoxious. It consisted of the most rigid Presbyterians, unwilling to make even the slightest concession to the policy of the Stuarts, or even to put an end to the persecution of those who had formerly served them, or were tainted with Episcopalian leanings. It is true the execution of Charles I. had aroused great and universal indignation in Scotland also. The Scottish Parliament immediately after the receipt of the news from London had proclaimed his son King of Great Britain and Ireland. It did, however, make provisos which in the main came down to this, that Charles II. was to give certain personal undertakings in the matter of religion, and that he was to swear to both the National Covenant and the Solemn League and Covenant. In other words, it was demanded of Charles II. that he should embrace the policy which had been so unacceptable to his father and all his English friends, that they had preferred to face civil war. Small wonder that among the King's English counsellors there was strong opposition to acceptance of the Scottish demands. The unfortunate result of the naval expedition in August of the previous year had detracted much from the influence of Culpepper and the other Presbyterians. It was now the turn of the strict Episcopalians, such as Hyde and Cottington. Charles II. indeed, who, so far as he believed in anything, believed in the full Royalist programme and in the Episcopalian Church, was greatly averse from submitting to the Presbyterian yoke and entrusting himself to the people who, to use the party-jargon of the day, had sold his father to his executioners. Particularly so long as there was an alternative course open to him.

In Ireland the Lord-Lieutenant, the Marquis of Ormonde, had not only managed to stand his ground, but he had just

concluded a peace with the Catholic insurgents, and was confident that he would soon be able to restore to their allegiance to the King the towns which were in the hands of the Parliament, and that he would then have at his disposal an army to make an attempt on England itself. In February he sent an envoy to The Hague to invite Charles to come to Ireland, and one can imagine what a temptation this idea must have been to the young King. It was really a resumption of the old plan of Charles I. and Strafford to establish the royal power in England with the help of Catholic Ireland. If this plan succeeded, young Charles, instead of being bound in religion and in politics by the Covenants, would become the autocrat which his father had dreamed of being. The greatest obstacle was that in spite of the assurances of Ormonde the position in Ireland still appeared very uncertain, and consequently several English statesmen were in favour of Scotland. There were, moreover, in The Hague, Scots of various shades of opinion who advised an acceptance of the Scottish conditions, among them even several nobles of the Hamilton party who had been banished by the new government. Of the Scots it was Montrose—the representative of absolute royalism, the man who had fainted on hearing of the execution of his King—it was Montrose alone who used his persuasion in favour of Ireland, and there was no one to whose persuasions Charles so gladly listened as to his, however fiercely the Presbyterians might hate him. It was not until April that the envoys of the Scottish government arrived to negotiate with ‘the proclaimed King’ about his reception.

This circumstance alone would be enough to suggest that the Prince of Orange must have greatly preferred to see his brother-in-law depart for Scotland than for Ireland. For those who did their best to make the King’s cause palatable to the people of the Netherlands that plan had all the advantages. It was one thing to recommend an alliance with the free Presbyterian kingdom of Scotland, but a very different matter to plead for support for an Episcopalian Stuart, dependent on Catholic Ireland and aiming at autocracy. The chaplains of whom the Scots wanted Charles II. to rid himself were equally repugnant to the Netherlands; one of them, for instance, preached vigorously against the Calvinists in general.¹ So the Scots themselves were counting on William II.’s advocating their cause with the King and used all possible influence with him.

¹ Aitzema, vi. p. 688.

The fullest and most authentic account in this connection is that of the Scottish minister, Spang, whom I have mentioned before, who went from Veere to The Hague in March, at the request of his friends in Scotland, and had a personal interview of over an hour with the Prince.¹ It appears from his detailed report that the Prince was very well informed as to the confused state of affairs in England and Scotland, and that, although he naturally gave a sympathetic reception to the Presbyterian spokesman, he was well posted in the arguments of Charles' English counsellors and admitted their being in some measure justifiable. Above all he saw clearly the dangers of the fierce intolerance of the party in power, and he feared, too, that to embrace the Solemn League and Covenant would damage the King's cause by alienating the Catholics and Episcopalians in England. Yet he concluded by promising that he would advise the King to accept both covenants, and he assured Spang on the following day that he had done so.² When the envoys of the Scottish government themselves arrived at the beginning of April, they were able to report immediately that they hoped to get their demands accepted with the help of the Prince of Orange.³

Lord Byron, Ormonde's envoy, was of opinion that the Scottish sympathies of the Prince of Orange and his mother were to be ascribed in the first place to the renewed suggestion of a marriage between the King and one of Frederick Henry's daughters.⁴ No positive evidence that this was so can be found. But there is no doubt that Amalia van Solms actually gave open support to the Scottish envoys,⁵ while Sophia of Bohemia, afterwards Electress of Hanover, declares in her *Mémoires* (a doubtful source however for the years she spent at The Hague) that the old princess about the same time, 1650, persuaded the Scots to suspect her, Sophia's, orthodoxy, in order the better to demonstrate the suitability of her own daughter for the dignity of

¹ Baillie, *op. cit.* iii. p. 73 *sqq.* Spang wanted to speak English or Latin, but William II. preferred Dutch. Lord Byron, the envoy of Ormonde, says: 'He understands English very well, though he speak it not, so that your Exc. shall not need trouble to write in French (Carte, *Ormonde Papers*, i. p. 269).

² Spang is, as one might imagine, very well disposed towards William II.: 'Ye will find our young Prince of Orange one of the hopefulest youths that ever Eyrope brought forth, and willing to doe all good offices for the cause' (*op. cit.* p. 83).

³ *Op. cit.* pp. 88, 90.

⁴ Carte, *Ormonde Papers*, i. 239.

⁵ Sophia of Bohemia wrote this to her brother Rupert on 13th April, 1649 (*Cal. St. P. Dom.* 1649-50, p. 85). Baillie, himself one of the Scottish envoys, wrote home to the same effect.

Queen of Scotland.¹ And of course we know only too well how very largely Amalia's policy was decided by the matrimonial prospects of her children. Byron, however, somewhat later makes the rather surprising announcement,² that William II. by no means allowed himself to be talked round by the Scottish lords, but that he had a higher opinion of his, Byron's, principal, Ormonde, than of any of them and desired to maintain friendly relations with him. This probably means simply that the Prince, who wanted to take up a propitiatory and mediatory attitude, thought it worth his while to cultivate the Irish party as he did the others, and was prodigal at least in protestations of friendship. Meanwhile it is very probable that he did not always follow a consistent course in this difficult question. Even Henrietta Maria and Jermyn, of whose advice William II. always thought very highly, considered this time that the Scots were too exacting, and the Queen of Bohemia, too, and her daughters were opposed heart and soul to the policy of submission to the Covenants, which was loathed by the most famous of her sons, Rupert, who at this time was at sea with the Royalist fleet. How much more attractive to chivalrous minds was the idealistic Royalism of Montrose or even the unbending Episcopalianism of Hyde. In November the Queen of Bohemia writes to Montrose that her niece, the Princess Royal, 'still keeps steadfastly to our side.'³ All the English influences in his cosmopolitan court and in his cosmopolitan family reacted on the Prince to the detriment of the Scots. Nevertheless it is certain that in June, when Charles was already in Breda and on the point of setting out for Ireland, the Prince once more brought serious pressure to bear on him to induce him to accept the Scottish demands. Nor is there the slightest reason to blame him for his advice.⁴ However much one may sympathise with the point of view of the English Royalists, who not only felt

¹ The Queen of Bohemia hoped to win Charles for Sophia. The Bohemian family was Calvinist, but most of its members were far from faultless in doctrine. The accusation against Sophia was that she accompanied Charles to common prayer. Cf. Sophia's *Mémoires*.

² Carte, *Ormonde Papers*, i. p. 264.

³ Napier, *Memoirs of Montrose*, p. 720.

⁴ Groen van Prinsterer, the famous historian of the house of Orange, thought it necessary to defend William II. from the imputation of this policy (*Archives*, ii. iv. p. cii). This part of the *Archives* was published in the year 1859. Groen, however, does not appear to have known either Napier's *Montrose*, 1856, or the *Letters and Journals of Baillie*, 1842.

deeply wronged by the negotiations with the Presbyterians, but the noblest of whom abhorred them as a line of action both insincere and humiliating, it is natural enough, and it speaks something for his independence, that William II. took into account in the first place not English but Dutch conditions. And that the States, *i.e.* the Orangist States-General, wanted an arrangement between the King and Scotland, is most positively asserted by all the contemporary authorities.¹ Strickland hits the nail on the head when he observes that the Prince is doing his best to bring the King and Scotland together, 'hoping by that means to carrie all heere.'²

In 1649, however, when there was still a possibility of a choice between Scotland and Ireland, William II., for all the obligations under which he had laid the King, did not succeed in keeping him back from Ireland. Nor did the Scots by any means make it easy for him. Compliance with their demand to introduce the Presbyterian religion into England and Ireland would cost the King the support of the only true friends he had. In Scotland, moreover, the persecution of the real Royalists was being relentlessly pursued; above all, the execution of the Earl of Huntly in the beginning of April was extraordinarily painful to the King. During this same period the Scottish envoys arrived at The Hague, and the first demand they put forward (and in the most offensive manner) was that the King should banish Montrose from his entourage. It is not to be supposed that the States of Holland could have been prevailed upon to give any practical help if Charles had chosen the Presbyterian path. They were not the party in the Netherlands who admired that ecclesiastical system. In any case the King got nothing in response to his request when he applied to the States-General for transport ships and a loan of £200,000 to further his expedition to Ireland,³ at the same time explaining exhaustively why he could not give ear to Scotland's call. The Prince of Orange supported the request, even though his advice had not been taken, but a policy which was to cost money could not easily be carried out against the wishes of Holland, and Holland

¹ Byron, for instance, after giving the conditions of the Scottish envoys, writes: 'But the King being now unfortunately in a Presbyterian country cannot resent these indignities so as otherwise he would (*Ormonde Papers*, i. p. 268).

² *Thurlow State Papers*, i. p. 115; 19th September, 1649.

³ *Clarendon State Papers*, ii. p. 482.

would not hear of it.¹ When at last, in June, the King set out on his Irish expedition, William II. had once again to put his hand in his own pocket to prevent Charles from being retained by his creditors.²

Yet all this trouble was for nought. It went ill with Charles' cause in Ireland from the moment that Cromwell set about conquering the island. The King himself, after long delay in France, never got any further than Jersey, where he waited for months in the most straitened circumstances, and where eventually in September and October the news of Cromwell's complete triumph reached him. 'It is obvious,' writes De Wilhem to Huygens,³ 'that God wishes to make him understand that Scotland is the only way to his restoration.' In fact there was nothing else left. But the Scots had not become more tractable. It is true they were ready to renew negotiations—they had even sent envoys to the King in Jersey—but always on the same conditions. It was now agreed that the negotiations should be resumed at Breda through the mediation of the Prince of Orange.⁴

The King accepted the proposal of these negotiations on the 21st January, 1650, N.S. On the following day he wrote to his trusted Montrose that he wished him none the less to proceed with his proposed expedition against the Scottish government. To fall back upon Montrose, the unconditional Royalist, was now Charles' only alternative course, but the way in which he sent him out against the Scottish Presbyterians while he himself was negotiating with them is rather a striking example of his duplicity. The position of the mediator in these negotiations was clearly no easy one. After consultation with his mother in France, Charles arrived at Breda with his destitute retinue early in April. Feelings between the English adherents of the King and the Scots had not improved since 1649. The English were in a suspicious mood even regarding the Prince of Orange. They knew that the Scots were counting on his

¹ *Archives*, ii. iv. p. 309. The assertion in the *Nicholas Papers*, i. p. 127, that the moneys were procured for the King by William II. 'underhand provided by the States' is most improbable. A similar account is found in 1650 (Gardiner, *Charles II. and Scotland in 1650*, p. 77). Strickland wrote in September, 1649: 'Pray, sir, doe but gratifie the States of Holland, and my life for it P.C. who hopes only to retrieve his game from hence, shall doe nothing, notwithstanding the greatness of the greatest heere.' (*Thurloe State Papers*, i. p. 119).

² Aitzema.

³ *Archives*, ii. iv. p. 315; 19th October, 1649.

⁴ *Letters and Papers illustrating the relations between Charles II. and Scotland in 1650*, publ. by Gardiner in 1894.

support and that some of their spokesmen had spent the whole winter in The Hague in order to bring their influence to bear on the Prince.¹ According to an English Republican, who had wormed his way into the retinue of Charles II.,² the King's followers comforted themselves with the thought that he would after all feel fairly independent towards his brother-in-law who had so completely ruined himself in the service of the Stuarts that little more financial support could be expected of him, while, besides, in his own country he had serious difficulties to contend with and his position was hardly secure.³

At the same time there is no doubt that, just as in 1649, the Prince did his best to induce the Scots to be more reasonable. Even the English Royalists recognised that fact. According to the Republican spy he made use in these efforts of the services of the Dutch Calvinists, of Dr. Rivet (who was at that time Rector of the University founded by Frederick Henry at Breda) and Voetius himself. The Dutch Calvinists were, as the Englishman says, 'nothing so rigid' as the Scottish, and Voetius was expected to lend his name out of complaisance towards the Prince.⁴ But the Prince's overriding desire was that an agreement should be arrived at, he cared not at whose expense. The English Republican, who watched the doings at Breda with a strong sense of their humorous side, perpetually alleges the Prince's chief motive to be that the upkeep of the King and his retinue fell entirely on him, and that he, with his already overburdened fortune, wanted therefore to be rid of him at any cost.⁵ It is not improbable that this consideration counted, although at this very time the Prince obtained the use of a very large sum,⁶ but, as has already been explained, an agreement between Charles and the Scots fitted in with William's general policy, in which a union of the States-General with the Stuarts against the English Republic formed so important a part. In any case it is certain that the Prince urged his brother-in-law to an acceptance of the most important demands of the Scots: one or two

¹ *Op. cit.* p. 60.

² His reports appeared in *A Briefe Relation*, the organ of the English Council of State, and are reprinted in Gardiner's book.

³ *Op. cit.* p. 30.

⁴ *Op. cit.* p. 51.

⁵ *Op. cit.* p. 76, etc.

⁶ He borrowed two millions from the town of Amsterdam. Cf. *infra*, p. 13, note 1.

documents have been preserved¹ in which he puts before the King his ideas on a possible answer to the Scottish delegates, and according to these Charles was to take his oath upon the Scottish Covenant, as well as upon the general Solemn League and Covenant, and personally to conform to the Presbyterian form of worship all the time he was in Scotland.

And so, to the bitter disappointment of Charles' English followers, the negotiations ended by his giving in. He still made a few reservations, it is true, but he accepted the main points: Montrose and Ormonde were repudiated, and with them Episcopalianism. In the beginning of May he signed the agreement. Dr. Rivet, who also took counsel with the Scottish ministers as to the manner in which, in accordance with the treaty, the English clergy were to be removed from the King's entourage, was present at the signature.² The most loyal Royalists heard with indescribable bitterness that the King had adopted for himself and his subjects a religion in which he had no faith, and that he had undertaken to cast off all those who had ruined themselves for him and for Episcopalianism in order to be received as the mock-king of the hated Scottish rebels. His mother herself repudiated the suspicion that she had 'urged him to sacrifice his honour and his conscience.' The Royalists in England were discouraged. And even before he left the Netherlands, Charles received news which was to bring home to him acutely the false position in which he had placed himself. Montrose had fallen into the hands of the Scottish government. It might be argued that his expedition would have had a better chance of success if Charles himself had not by his negotiations with the Covenanters smothered the desire of wavering Scots to join his ranks. In any case no mercy was shown to Montrose. Despite the King's commission which he held, he was hanged and quartered as a traitor. No greater opprobrium could have been shown to Charles. The news reached him while he was staying with his sister and brother-in-law Orange at Honse-laarsdijk³ immediately before he was to embark. For one

¹ Wynne, *Geschillen over de afdanking van het krijgsvolk*, p. 93. Reprinted in Gardiner. Unfortunately these documents are not dated.

² *Op. cit.* pp. 81, 85.

³ He had spent another month in Breda after the conclusion of the treaty, according to the English spy, because he did not want to face the displeasure of the States of Holland at The Hague (Gardiner, *op. cit.* p. 119). In the *Rawlinson Letters* there is a letter from the Princess Royal to Heenvliet, from Breda, undated but

moment it caused him to hesitate.¹ What would his own life be worth if he put himself into the power of these inexorable fanatics? But it was too late to turn back. Towards the middle of June he embarked on a Dutch man-of-war with a party of English Presbyterians and moderate Scots, whom the true Presbyterians regarded as nothing short of 'prophane,' and whom on his arrival (still further concessions having been wrung from him *en route*) he was forced immediately to dismiss. He was irretrievably delivered into the hands of the unbending clerical party, who were to spare him no humiliation. And had he but had the Scots alone to reckon with. But the English spy, to whom I have so often referred, wrote to his principals as soon as he knew of the conclusion of the agreement, to warn them that the Royalists would now move heaven and earth to get foreign troops into Scotland in order to use that country as the backdoor for an attack on England. 'Therefore if you be wise, shut that backdoor this summer, and then you will be safer next'²—advice which Cromwell was to follow in less time than Charles could get hold of foreign auxiliaries. For his brother-in-law, Orange, in whom, as ever, his main hopes were centred, still saw some chance, it is true, to help him to get more funds,³ but he had his own opposition to reckon with before he could think of mobilising the resources of the Netherlands State on behalf of the Stuarts.

The history of the last year and a half had proved that the opposition of Holland was enough to cripple all political action on the part of the Stadholder. In order to realise that, we must go back to the moment when the news of the execution of Charles I. reached The Hague. From that moment, the middle of February 1649, there was as violent an onslaught on the policy of neutrality established in 1642 as there had been in 1645, and from that moment, too, the States of Holland, with the same success as before, had put up an obstinate resistance. They did not allow themselves to be upset for one moment by

apparently of May, 1650. She asks him to show this letter to her husband, and continues: 'afin que nous puissions venir à La Haye. Le Roy est en grande impassiance et ne fait que demander quand vous viendrés icy.'

¹ Even William II. wrote (13th June) from Schoonhoven to Heenvliet: 'Je croy qu'il sera bien périlleux après avoir attendu cy longtemps de s'embarquer, et il vaudroit mieux remettre l'affaire à une autre fois' (*Rawlinson Letters*). The King was already on board.

² *Op. cit.* p. 90.

³ Cf. *infra*, p. 13, note 1.

all the excitement about 'the regicide.' From beginning to end they made it their business to keep on good terms with the actual rulers in England. It was not in the first place a feeling of spiritual kinship with the Republican party that prompted their attitude. It was above all a calm appreciation of the interests of their own country. True, it might be argued that those interests would be endangered rather than helped by the conquest of Scotland by the English revolutionaries. The French, as has been observed already, realised quite clearly that the disunion of the island kingdom fitted in best with their interests, and events were soon to prove how dangerous for the Netherlands particularly a strong and united Great Britain, be it under Cromwell or under the Stuarts, could be. Undoubtedly at that time too, as always, immediate commercial interests played an excessively important part in the political considerations of the Holland party, and that meant, of course, respecting the Commonwealth, which was powerful at sea. There was, moreover, the fact that the States of Holland found it difficult to take an unprejudiced view of a question which, owing to the dynastic policy of the house of Orange, had become so essentially a party-question. Had they and Orange been of one mind they might perhaps have backed the Stuarts against England—it would have been a dangerous policy at any time!—but they naturally preferred not to have any dealings with a Stuart whom Orange when it suited him might back against them.¹

In the meantime an immediate attempt was made on the part of the Orange party to make the proclamation of the Republic the opportunity for a break. Naturally they hoped to be able to carry the States-General with them in their dangerous policy.

¹ Cf. *Briefve Relation*, 9th Sept. 1650 (Br. Mus.; not printed in Gardiner's *Charles II. and Scotland*): 'They (the Hollanders) wish verie well to your affaires in Scotland.'—I don't quite know what is to be made of the fact that in April 1650 Amsterdam advanced two millions to William II. on the security of estates—a capital sum which the Prince certainly did not need merely to wipe out old debts, but which at the same time enabled him to come once more to the assistance of Charles II., who just at that time was preparing to go to Scotland (Wagenaar, *Amsterdam*, i. p. 550). It looks like a sort of reassurance, an attempt, just when Schaep had been sent to England, to pave the way for friendly relations in the other camp as well (cf. *infra*, p. 14). In the absence of any certain data as to how the Prince spent the money, it is impossible to decide the exact significance of this fact. This much of course is certain that he, who two or three months later carried out his attack on Amsterdam, did not allow his gratitude for this loan to exercise any influence on his line of policy.

The Herr van Renswoude, an Utrecht Orangist, happened to be president, while the Greffier Musch, whose duty it was to 'extend' (that is, to resume and formulate) resolutions, could always be counted on. Together these gentlemen did their best to push through a resolution that Charles II. should be acknowledged formally as King of Great Britain. Holland and Zeeland—urgent commercial considerations again made this latter Province shake itself free from Orange control—opposed this proposal tooth and nail, and succeeded at length in modifying it so far that Charles was to be addressed merely by the general title of King, a title to which, of course, since his proclamation by the Scottish Parliament, he had an unquestionable right. The two Provinces also succeeded in preventing the *éclat* of an ostentatious recall from England of the ambassadors who had been sent in a vain effort to save the king's life. The Heer van Heemstede, it is true, had to return. He offended the Orange party still further by reporting that he had been treated with the greatest consideration by the new rulers in England, whereas except in Holland (which was indeed his own province) the general wish was for provocative accounts. But he had been merely an envoy extraordinary; the great point was that Joachimi was allowed to stay. And, in fact, why should he not stay? The ambassadors of France, Portugal, Spain were not recalled either, even though for the time being the English Republic was not recognised by any other State.

But the Netherlands was a house divided against itself. Each party succeeded in making it impossible for the other side to carry out its policy, and the result was an entire lack of unity in the foreign politics of the Republic. The States-General could not recall Joachimi against the wish of Holland, but they could prevent his being accredited to the new government. To all the ambassador's urgent requests for more definite instructions the reply was that he must make observations and not enter into any negotiations. This attitude naturally roused ill-feeling in the new rulers of England. Then a sensational event took place at The Hague. In May Doreslaer, a Hollander in English service, was appointed by the Parliament as ambassador to the States in addition to Strickland. A few days after his arrival he was murdered in cold blood by some Scottish Royalists from Montrose's following. The States of Holland did what they could to bring the perpetrators of the deed, which took place in their territory, to justice, but without success, and the occur-

rence naturally made a very bad impression in England. The Parliament addressed a very sharp note to Joachimi, who replied by expressing in writing his horror at the event. That roused the indignation of the States-General against him, because it implied a recognition of the Republican government. So that the ambassador could not move a finger, and at the same time the States-General persisted in their refusal—here again the opposition of two forces resulted in a negative policy—to receive Strickland, who now presented himself again with new credentials on behalf of the English Republic. The idea was that in this way, simply by doing nothing, it would still be possible so to poison the relations with England that a conflict would become inevitable.

In fact this grew to be the most dangerous question. Holland could easily enough, as we have seen already, prevent any help being given to Charles II. when he went to Ireland. But although Holland could obstruct, she could not enforce action. And so Strickland, in spite of all his importunities, eventually even by using the threat that he would have to leave the country, could not obtain admittance to the States-General. This was taken very much amiss in England. Strickland himself, as far as can be gathered from his letters in the well-known *Thurloe Papers*,¹ was inclined to be satisfied with the friendship of the States of Holland, who had received him as Resident of the Commonwealth of England, as soon as he turned to them.² He was perpetually impressing on his masters, the Council of State, the need that this friendship should be kept up by giving the Hollanders satisfaction on the blockade questions which were always cropping up. In this respect the English government were at times willing enough to be accommodating, but the threat to recall Strickland, in other words definitely to break off diplomatic relations, was none the less seriously meant. The States of Holland, therefore, who were no doubt impressed by Cromwell's victories in Ireland just at that time, appealed to the other Provinces to call their deputies in the States-General to order, plainly hinting that these gentlemen, trusting to their masters' ignorance of foreign policy, allowed themselves to be led by the Prince of Orange, the dispenser of countless jobs, especially in the army. This protest angered the Orangist party greatly, but had no other effect.³ It appeared convincingly that

¹ *Thurloe State Papers*, i. p. 113 sqq.

² *Ibid.* p. 118.

³ Aitzema, vi. p. 831; *Thurloe*, v. 127.

the Prince of Orange could influence the States-General to carry through a policy which served no single Dutch interest, but which most obviously ran counter to Dutch interests.

Under these circumstances the States of Holland decided on a step of incalculable import. In the beginning of December 1649 it was proposed in their assembly to ¹ send a 'commissioner' to England on behalf of the Province, and, in fact, on the 21st May, 1650, Mr. Gerard Schaep of Amsterdam crossed to England in that capacity with an instruction dated May 5th.² The aim of this mission, which is moreover clearly stated in the instruction, must have been twofold. In the first place Holland, whose inhabitants had so many interests to be looked after in England, wanted to have an agent there who could accomplish more than Joachimi, now nearly ninety, and whose hands, as we have seen, were tied by the States-General. Then she wanted also, particularly now that there was the danger of Strickland being recalled, a channel through which to keep in touch with the Republican administration in England and to mitigate somewhat the ill-feeling caused by the attitude of the Orange party. Thus to look after commercial interests and to counteract the war policy of William II. was the task of Gerard Schaep. If Holland was not meekly to submit to the yoke of the Stadholder's dynastic policy and allow the country to be plunged into a senseless war, a step of this kind was inevitable, but that it might have a serious effect on the unity of the Republic, even though it was not a violation of the Union of Utrecht,³ needs no arguing. The Prince of Orange spoke with the greatest uneasiness about it to the French ambassador, describing it as a manoeuvre which would result in the complete disruption of the union if it were not thwarted.⁴

Solicitude for the union was always the fine-sounding shibboleth by which the Princes of Orange, who could do what they liked with the States-General, tried to impress the outside world. In fact, it was the opposition which Holland offered to his English policy which William II. could not brook. It is of course incontestable that in those days the Union was exposed to serious dangers. The conflict between Holland and the Orange party was

¹ *Archives*, ii. iv. p. 317.

² Aitzema, vii. p. 23.

³ Article X. of the Union merely prohibited the members from entering into separate 'alliances or treaties' with other states.

⁴ *Archives*, ii. iv. p. 317.

undermining the defective constitution. But I think I have made it clear that it was the Prince's action in the English question, together with the unrepresentative, even corrupt, character of the States-General, which was the main cause of this. Holland's attitude was fundamentally a defensive one. At this very time the conflict was beginning to concentrate round the question of the disbanding of the troops. Now that there was peace, Holland wanted to diminish the military charges so as to be able to set about clearing off the national debt. Important as it was in itself, this question became one of great weight mainly because of its connection with the great conflict of opinion over foreign policy and who was to have the deciding of it.

Now here the English question, which under Frederick Henry already had been the principal factor in causing the revival of the States' opposition to the Stadholder, was still the most prominent point. Aitzema, after having spoken about the difficulties in connection with the reception of Strickland, says: 'This in time caused a difference between Holland and the Prince, which was increased by the questions of economy and reduction of the army.' It is to be noted that he too regards the English question as the main cause of the breach. An even more definite expression of opinion in this sense came from the Spanish ambassador, Brun, who watched with anxiety the course of the party struggle, which for his King too would result in war or peace. 'It appears,' he wrote a few weeks after matters had worked up to the crisis of the famous attempt on Amsterdam,¹ 'that the event in Holland has occurred in retaliation for the action of the States in sending a resident to England, and not on account of the troops.' It is true that the English question was not the only one in the realm of foreign politics, but it was indissolubly bound up with the other. In the mind of the Prince it had long been connected with the question of the peace with Spain and with the attitude towards France. The plan that occupied his mind was to undo the work of Münster, to renew the alliance with France for the partition of the Southern Netherlands and for the restoration of the Stuarts on the throne

¹ 16th Aug. 1650: P. L. Muller, *Spanje en de partijen in Nederland in 1650*, in *Nijhoff's Bijdragen*, Nieuwe Reeks, vii. p. 149. In my opinion Muller is quite wrong in calling this 'a certainly somewhat curious utterance.' His incredulity merely proves how completely the aspects of the foreign policy of Frederick Henry and William II., which I am putting forward in this study, have been neglected.

of England.¹ In this he followed the tradition of his father, but without the latter's caution. His scheming with France behind the back of the States with a view to breaking the freshly made peace was in itself already much worse than anything Frederick Henry had ever done. But, moreover, the purport of the secret negotiations, which as early as the end of October 1648, William II. had caused to be opened by Aerssens van Sommelsdyk, the son,² was in the highest degree objectionable. Probably there is no document in the archives of the house of Orange which redounds so little to its credit as that of February 1649,³ in which William II., in his own bad French, wrote down his ideas on the subject of his co-operation with France as an instruction for an envoy of his own to the French government. France was to be assured that he had influence enough in the six small Provinces to venture to count on their support for his war policy against Spain. Without mincing words he calls on the support of France against the opposition of Holland. He reckons with the possibility that a schism might break out in the Republic, in which he and the six Provinces would find themselves opposed to Holland—and not even a united Holland. If France then should be willing to recognise the six Provinces as a State and come to their assistance with money, he would be able to quell Holland with the army and lead the whole Republic into the war. Of course the States of Holland had no knowledge of this startling document, but they must have had a suspicion of what was going on.

Compared with the almost treasonable relations with France into which William II. had entered, the mission of Schaep, the boldest step which the States of Holland permitted themselves, was innocent enough, even though William II. viewed it in quite a different light. In any case the Orange party used the event to reconcile public opinion with the Prince's *coup d'état* of July-August 1650, but in doing so they judged it necessary to distort

¹ As it is expressed in the very bitter pamphlet, *Openhertig Discours . . . rakende de subite dood van Z.H.* (1651; Knuttel), William II. would have liked to subdue all the provinces; he wanted to dismiss the independent magistrates everywhere and replace them with 'servile' officers, 'and then we should have been plunged into two wars at the same time; to wit against the Parliament of England in order to help the King of Scotland, and against Spain to please the frivolous French, in whom he placed all his faith.'

² *Archives*, ii. iv. p. 280.

³ *Archives*, ii. iv. p. 298. The document is not dated. Groen puts it down to the end of February 1649.

its significance. Although the French ambassador immediately on hearing the news is ready to declare¹ that the task of the 'commissary' was to bring about an alliance between the Province of Holland and the Commonwealth of England, there is no single indication that this actually was the case. Van der Capellen, the Gelderland Orangist, also gives an account of a rumour² to the effect that 'Bicker, De Witt and others' through the medium of Schaep had carried on 'a secret correspondence with the Parliament in England,' but he is obliged to add himself that there is 'no evidence of it.' In fact it was only one of the foremost excuses that had to do service to justify the attack on Amsterdam in the eyes of an amazed world.³

Of course, with their opponents in such a close bond, a working alliance between the Republican parties in England and the Netherlands would have been quite natural. Nor is there any doubt, as has already been indicated, that the Hollanders wished Cromwell every success in his military enterprises both against the Scots and the Irish.⁴ Their desire to keep England's friendship went so far that the States of Holland did their best to suppress the writings of Saumaise and Graswinckel against

¹ *Archives*, ii. iv. p. 317.

² *Gedenkschriften*, ii. p. 281.

³ About the time of the attack on Amsterdam a pamphlet was published in which there is a letter from Schaep, dated 14th July, 1650, with a complete draft-treaty between Amsterdam and the English Commonwealth. But there is no doubt that this document was invented and part of the plot against the great town (cf. Wicquefort, i. p. 528). In *For. St. P. Holland*, vol. 159, there is a letter of the 11th August, 1650, from Utrecht signed Cha. Ledison (one of the pseudonyms of Sir E. Nicholas) about the attack on Amsterdam, in which credence is given to these stories: 'Its reported that in order to render themselves sovereigns and to curbe the rest of the provinces a factious party in that city hath by their Agent Monsr Scape now in England, and other underhand instruments, treated with the Rebels there to send them to Amsterdam by the Tassell 10,000 men whereof 5000 were to have come very speedily being (some say) alreddy levyed and reddy to be shipped under pretence of being sent for Irland, and the other 5000 were to be sent a monthe or 6 weeks after. By their complices in England its easy to make a judgment of theire designe and intentions; but I believe untill the English rebells see the success of their forces now marched into the Northe, they will be wary how they send many men into any foreigne partes.' Thus from the beginning wise people had their doubts. On the 15th August Nicholas wrote: 'Methinkes those who are of the Prince of Orange's counsell should use all possible industry to get prooffe of the truth of what is printed concerning the agreement between Scape and the Rebels of England, which is a business of very great importance for these States to knowe.'

⁴ See *supra*, p. 207, note (1).

Milton's *Defensio pro populo Anglicano*.¹ The correspondent of the *Briefe Relation*² even gives an account of very suspicious utterances he has heard from Hollanders: 'If the rest of the provinces will be slaves, they will not. If the bundle of arrows must be unbound, they of Holland know into what quiver to put their arrows with safety and advantage.'³ Remarkable language certainly, but obviously more an expression of irritation and fear than the reflection of a responsible political plan. One of the main characteristics of the regents of Holland was their caution. Their tactics had all the weakness which is usually the accompaniment of a defensive attitude. If they had wanted to take up an offensive position they would have had to be better organised under a universally recognised leader. Men like the Bickers of Amsterdam and De Witt of Dordt certainly had a great influence in the States of Holland, but the only position which offered an opportunity to a real leader to develop himself to the full—the position of Grand Pensionary—was held by the timid, pliant Cats.⁴ The States left the initiative in everything to their opponents, who, whatever else they lacked, had the advantage of being subject to a strong personal leadership.

Thus it happened that at the end of July 1650 the crisis took the States party unawares with an act of aggression on the part of the Prince. It is not necessary to repeat here all those familiar happenings, the capture of the six members of the States of Holland, the attempt on Amsterdam, all undertaken on the authority of a most irregular and very vaguely worded resolution of the States-General. It is enough to observe that in none of the struggles between the house of Orange and the regent party was the sympathy of the people so little on the side of Orange. The German captain who silenced one of the arrested gentlemen by saying, 'whoever has the army on his side is master,'⁵ was not unfair to William II.'s cause. It was military force which decided the issue. It is of course true

¹ See Wicquefort, i. p. 522, and *Briefe Relation* in Gardiner, *Charles II. and Scotland in 1650*.

² Who had left the court of Charles II. and had betaken himself to Leyden (Gardiner, *op. cit.* p. 115).

³ Gardiner, *op. cit.* p. 114.

⁴ 'Be pliant, friend, whoe'er thou be,
A virtue 'tis will profit thee.'

—From Cats's *The Reed and the Oaktree*.

⁵ Pelnitz to Nanning Keyser; *Bijdragen en Mededeelingen Historisch Genootschap*, xviii. p. 356.

that the Calvinist clergy on the whole worked for the Prince,¹ and probably the agreement which the Prince had been the means of bringing about between Charles II. and Presbyterian Scotland at Breda had still further strengthened their zeal. The commercial classes in any case can hardly have anticipated but with the greatest uneasiness the Prince of Orange's being on the point of carrying out his military plans. We have seen how Zeeland, where the commercial interest was almost as predominant as in Holland, but where at the same time the Prince had great personal influence, ventured to make a stand against his English policy in 1649. That was no longer the position in 1650. Zeeland conformed to the demands of the court, but Aitzema here again says explicitly that some of the 'principaelste' of the Zeeland delegates 'tried as usual to comply as much as possible with the Prince's wishes to serve their private interests and intrigues.'² Particularly significant is the unanimity with which the inhabitants of Amsterdam stood by their regents during the siege.³

One might have thought that the failure of the attack on Amsterdam would have offered a splendid opportunity to the States party once and for all to square accounts with the ambitious Stadholder. But here the party's lack of organisation told. Van der Capellen says with scorn that he 'had expected more wisdom and courage from these gallant spirits.'⁴ Indeed, particularly the lack of unity among the Amsterdam magistrates, some of whom used the opportunity to oust the Bickers from power,⁵ makes a pitiable impression. Thus in spite of his initial defeat William II. managed, not only to find a way out of the impasse, but also decidedly to strengthen his position, and he made use of it with more talent perhaps than he had displayed hitherto. There are signs more than enough that his *coup d'état* aroused fear among his opponents, who left him a free hand for some time. The small Provinces swallowed their objections against his action⁶ and vied with one another

¹ Aitzema, vii. p. 53 ; *Briefse Relation*, 9th September, 1650.

² vii. p. 11.

³ See e.g. Fabio Chigi to the Cardinal-Secretary of State, *B.M.H.G.*, xxxv. p. 121.

⁴ *Gedenkschriften*, ii. p. 281. ⁵ Elias, *Vroedschap van Amsterdam*, p. xcix.

⁶ The strength of these appears from a letter to the Van der Capellen of the *Gedenkschriften* from his son, published in Wicquefort, i. p. 448. Here the dissatisfaction of the 'common man' is spoken of, and it is said that 'most people thought His Highness was in the wrong.'

in offering him resolutions of thanks. Aitzema relates that the States of Groningen had passed a resolution to the effect that the envoy of the English Republic ought to be received, but that their delegates dared not table this advice in the States-General.¹ The English Republican, whom I have already quoted, observed it all with the greatest annoyance. Writing in the beginning of September,² he refers to 'the miserable base business of Amsterdam, whereby hath been discovered the baseness of som Provinces, and the weakness of other, and by both their ripeness for slaverie, and readiness to succumb; certainly that gallant spirit which possest those people when they bravely (to their hitherto lasting honor) vindicated that libertie from the oppressions of the most potent Prince of Europe, which they have now tamely given up into the hands of their own servants, hath made a transmigration into our Nation.' Indeed the records that are left of the conduct even of the Hollanders in the hour of crisis do not impress one with respect for their strength of character. The captured gentlemen were left in the lurch without much opposition. Several of them addressed humble letters to the Prince which are far from edifying.³ Gerard Schaep too wrote from London to the secretary of the Frisian stadholder in the hope that 'sinistre opinies' which were cherished at the court about him would be given up.⁴

Nevertheless it would be very wrong to believe that the crisis had led William II. to an unassailable position of power. It is certain that he was preparing himself for a vigorous attempt to carry out his foreign plans when death took him by surprise. But it is equally certain that Holland immediately thwarted him again when, as early as August, the question of war was brought up once more.⁵ The States had bent under the force of the storm, but they were by no means broken. They were probably still as little fitted as ever to take an energetic initiative against the Prince, but under their new leaders, now that the old ones had been forcibly removed, they were no less adepts in the tactics of parrying and checking.⁶ The English Republican in

¹ vii. p. 155.

² *Briefve Relation*, Sept. 9, 1650.

³ Wynne, *op. cit.* p. 156 (Duyst van Voorhout), 166 (Nanning Keyser); Ruyl made it even worse.

⁴ *Ibid.* p. 179.

⁵ Fruin, *Verspreide Geschriften*, iv. p. 166 *sqq.*

⁶ Brun writes (28th Aug.; Muller, *op. cit.* p. 166): 'My confidants in the Province of Holland say . . . that despite all this their Province is not overthrown, as

Leyden anticipated that the Prince would succeed in moving the States-General to a war with the English Commonwealth, if Cromwell was not successful in Scotland.¹ There was a close relation between the development of events there and in the Netherlands. The Scots themselves expected much from William II.² MacDowell, as resident of the King of Scotland, made tremendous efforts, and the Hollanders hardly dared protest against the vehemence with which he expressed himself against the English Republic in official documents.³ The battle of Dunbar, however, where the Scottish army suffered a crushing defeat (13th Sept., N.S.), was a fresh set-back to the English policy of William II. The position certainly became more perilous than ever, when in October the English government, which now felt itself to be stronger, turned Joachimi out of the country to avenge the refusal to receive Strickland. An actual break in the diplomatic relations between the two States had taken place. But without doubt Dunbar renewed the courage of the Prince's opponents in Holland as well. On the 24th September Sir Edward Nicholas, one of the most eminent royalist exiles, writes from The Hague that the party-feeling against the Stadholder is increasing daily.⁴ William II. had by no means finished with the opposition in Holland. The actual battle had yet to be fought when he decided the moment had come to press for a decision on the all-important point of foreign policy. Nobody knows what the outcome of that battle would have been. On November 6th the Prince, but twenty-four years old, died of smallpox.

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people think, but that she is still as powerful as before and watches her interests and safety more closely than she formerly used to do.' It is true he did not place much faith in these professions.

¹ *Briefe Relation*, Sept., 9, 1650.

² A republican correspondent in London wrote on the 18th Nov., 1650, to the Netherlands: 'La mort de Son Altesse d'Orange fauche les espérances de nos ennemis et nous fera sans doute voir quelque grand changement aux affaires d'Escoce' (*B.M.H.G.*, iii. (1880) p. 239).

³ Aitzema, vii. p. 155.

⁴ 'The party in these parts increases every day in faction against the Prince of Orange' (*Nicholas Papers*, i. p. 198).

The Last Execution for Witchcraft in Scotland, 1722

A HUNDRED years ago, 1821, the ancient laws against witchcraft were repealed in Ireland, though it is said that even to-day 'in the Commission of the Peace, the newly-appointed magistrate is empowered to take cognisance of, amongst other crimes, 'Witchcraft, Inchantment, Sorcery, Magic Arts.''¹ Some morning of the present year—Chambers, in his *Domestic Annals* makes June the month—is the bi-centenary of the pseudo-legal execution of the last woman to suffer such a penalty in these islands for witchcraft. The victim was an insane old woman from the parish of Loth, in Sutherlandshire, who was condemned to death by the sheriff-depute, Captain David Ross of Little Dean, for the usual crimes of bewitching pigs and poultry, and, worst of all, for having transformed her daughter into a pony and had her shod by the Devil. On her human steed she was said to have ridden about to such an extent that the girl was lame for the rest of her life, both in hands and feet. The old woman was duly 'wirreit at a stake and brint in assis' in the town of Dornoch. The story goes that, the morning being chilly, she warmed her cold hands at 'the bonnie fire,' as she called it, while the preparations for her murder were being completed. Apparently she did not realise her situation, and was probably in her dotage. There is mention of a tar barrel being used in her funeral pyre.

The sheriff-depute was exceeding his powers and the execution was practically illegal. Only four years previously, Robert Dundas of Arniston, then King's Advocate, had administered a stinging rebuke to the sheriff-depute of Caithness for allowing certain witches to be examined without sending their precognitions to Edinburgh. He forbade the sheriff-depute to judge the case himself, as he evidently had intended to do, reminding him that such matters were 'above the jurisdiction of an inferior

¹ St. John D. Seymour, B.D., *Irish Witchcraft and Demonology*, 1913, p. 248.

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court.' Dr. Charles Mackay, in his *Extraordinary Popular Delusions*, makes Captain Ross the culprit in both cases, but this may be a mistake.

The feature of this witch-story that captured the popular imagination was the conversion, for unhallowed purposes, of the daughter into a beast of burden. Such a transformation, however, was a common occurrence all over Europe, at least in the 'dittays' of women accused of witchcraft. It was also one of the few stock plots in the folk-tales of all countries. William of Malmesbury, for instance, chronicles the metamorphosis by two witches of a young juggler into a donkey, which, as it still retained its human intellect, brought them in a deal of money by its tricks. Any person lucky enough to possess a magic bridle, a 'gand-reid' as they called it in Scandinavia, need never lack a human horse. In 1634, a Lancashire lad, named Edward Robinson, saw two greyhounds turn into Dame Dickenson and a neighbour's boy. After some conversation together the Dame took a bridle out of her pocket, shook it over the head of the boy who had been the greyhound, and he immediately turned into a horse. Him the Dame mounted taking young Robinson up beside her.

The detection of an impostor who declared that she had been cruelly misused by a witch riding her in the night, is recounted in a scarce old pamphlet, *Strange and Terrible News from Cambridge proved to be a Lie* (quoted by George Offor, in his Introduction to Increase Mather's *Remarkable Providences*, 1890). A highly respectable Quaker lady named Morlin, was tried for witchcraft and only saved from an ignominious death by the astuteness of Judge Windham. A woman, called Pryer, swore that the lady appeared at her bedside one night about two years before, and took her from her husband's side. She next transformed her into a bay mare, and rode her several miles through dirty lanes to a witch convention. In answer to the Judge she said her feet were a little sore, but not her hands: nor was she at all dirty. The Judge directed an acquittal, ascribing the evidence to a dream.

In Sweden, according to Horneck, a paddock was provided at the Blockula for the witches' steeds to graze in till the ceremonies of the Sabbath were completed. Human beings who had been used as horses were simply propped up against the wall, where they slumbered till they were again required for the return journey. A Scottish story, related by J. F. Campbell in his

Popular Tales of the West Highlands, shows that the 'gand-reid' was in common use in Galloway at least.

When Jenny Macgowan, 'The Witch of Bogra,' wished to attend a convention at the Auld Kirk o' Buittle, she went quietly to the bothy, shook the enchanted bridle over the head of a slumbering young ploughman, and, whispering the words 'Up horsey !' in his ear, he was immediately transformed into a horse. On reaching the kirk he was tied to the churchyard gate, where he found himself among friends. The dairymaid from Glengap was there in the shape of a handsome mare : an old ploughman of his acquaintance was a broken-winded knacker : a cotwife from the Bennan limped with a swollen knee : while a young herd-lad was present as a pony. On his return home he determined to have his revenge. He found the magic bridle a week later, hidden in the kitchen, and used it on Jenny, repeating the two-word spell. Jenny at once became an old brown mare. He took her to the smithy and had her shod all round, but with the utmost difficulty as may be guessed.

At Yarrowfoot the same sort of thing occurred, and the witch-mare, after being shod, was sold to her husband. To his inexpressible surprise, when he removed the bridle, his wife stood before him in her ordinary guise but wearing horse-shoes on her hands and feet. The variants of this fantastic story are legion. A combination of the two versions above occurs in Denmark, where a ploughman in the neighbourhood of Ostrel is ridden by his mistress to Tromskirk, in Norway, but gaining possession of the 'gand-reid' he transforms her in turn into a mare, has her shod, and sells her to her husband for a goodly sum. On discovering her identity, he turns her out of doors, but she is never able to get rid of her four horse-shoes. It is recorded of St. Macarius that he once encountered a poor old woman who had been changed into a horse, and restored her to her own shape by sprinkling her with holy water.

There is, however, another aspect of the matter of metamorphosis. In a confession made by a Forfar witch, Agnes Sparke, in 1661, we read : 'The said Agnes Sparke confesseth as followeth, first, that in August last Isobel Shirie cam to hir about midnight, and carried her away to Littlemiln or thereabout, and that ther shoe did sie about ane dusson of people dauncing, and that they had suet musicke amongst them and as shoe thought it was the musicke of ane pype, and that shoe hard that people ther present did speake of Isabell Shirie and say that shoe was

the divills horse, and that the divill did alwayes ryde upon hir, and that shoe was shoad like ane mare or ane horse . . . And that Isabel Shirie carried hir back again to hir owne house. That the nixt day after, shoe went to see the said Isabell, and that shoe fund hir lying on hir bed, and that shoe did ly all that day. And that hir hands were very sore and that she plucked the skin off them and maid great moan and said that it was no wonder that shoe haid so sore hands seeing shoe was so sore tossed up and doune, and the said Agnes answered hir If you haid not been at such worke yesterevin as you was at, you wold not have been lying in your bed this day.' ¹ In this case it would seem, judging from her injured hands, that the woman had actually been taking the place of a horse. She may have been disguised by wearing the mask of a horse, for animal transformations of such sort were common in the ritual of the nature religions.

A further complication is introduced into the case of the woman of Loth by a sentence from a letter written at Alness, in Ross, and dated 1727, which was sent to the famous Rev. Robert Wodrow, Minister of Eastwood and an indefatigable collector of the weird and wonderful. It is quoted by C. Kirkpatrick Sharpe in his Prefatory Notice (pp. xcvi-xcviii) to his edition of *Law's Memorials* (1819). 'Since I saw you in Edinburgh in May last, there has been great noise of witchcraft in the parish of Loth, in Sutherland, by which the minister is said to have suffered. He is not yet recovered: however, the thing has been examined into, and the women were, I know, before the presbytery.' This would be four years after the old woman suffered the extreme penalty. Was there a witch lodge in Loth, or was a credulous clergyman at the bottom of the whole tragedy? If the minister of Loth considered himself aggrieved by a crazy old woman with a semi-paralysed daughter, and the matter was threshed out before a superstitious sheriff, the rope and stake at Dornoch were foregone conclusions.

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¹ Joseph Anderson, *The Confessions of the Forfar Witches*, Proceedings of the Scottish Antiquaries, April 9, 1888.

The Office of Sheriff in Scotland¹

ITS ORIGIN AND EARLY DEVELOPMENT

THE additions which William made to the existing sheriffdoms were Banff,² Kincardine,³ Ayr,⁴ and Nairn⁵ (Invernairn); but he had a scheme for the reorganisation of all which seems at first hard to understand. In his law of Claremathan he specified the places to which warrantors of stolen cattle were to report their loss. They were: Scone for Gowry; Cluny for Stormonth; Rait for Athol; Dalgynch for Fife; Kyntouloch for Strathearn; Forfar for Angus; Dunnotter for Mearns; Aberdeen for Mar and Buchan; Inverness for Moray and Ross.⁶ No town is mentioned south of the Forth; the sheriff of Edinburgh is ignored; subjects in Lothian and Galloway have to travel to the Brig of Stirling, long famous for trials by battle. The reason for assigning Galloway to Stirling may have been that Galloway had mairs,⁷ but no sheriffs. But Lothian, or Edinburgh, had a sheriff. Under David I. Linlithgow, Edinburgh, and Haddington were three separate sheriffdoms. In William's reign, and until 1451, Linlithgow and Haddington were constabularies *within* the sheriffdom of Edinburgh. Why was not the sheriff of Edinburgh appointed, rather than the sheriff of Stirling, for Lothian and Galloway? The reason lies probably in the fact that the Sheriff of Stirling from 1180 to 1226—Alexander de Stirling—also held the office of Justiciar of Lothian.⁸

Another anomaly of this reign is the conversion of the sheriffdom of Crail⁹ to that of Fife. Galfrid is sheriff of Crail in 1195.

¹ See *Scottish Historical Review*, vol. xx. p. 129.

² *Reg. de Moray*, No. 14.

³ *Charters of Inchaffray* (Scot. Hist. Soc.), p. 265.

⁴ *Charters of Ayr*; *Reg. de Passelet*, p. 22.

⁵ *Reg. de Moray*; *Antiq. Abdn. and Bnff.* ii. p. 283.

⁶ *Ass. Reg. Will.* iii. and iv.

⁷ *Ass. Will.* 23, 24.

⁸ *Inchaffray Charters*, p. 268.

⁹ In the case of every other sheriffdom in existence before 1292 the name of the sheriffdom is derived from the burgh of the king's oldest castle.

He is still in office in 1212, but is then styled Sheriff of Fife. This province is not to be confused with the earldom, which became a Royal Stewartry in 1455, and was administered as such till 1747.

The changes made in the reign of William constitute a distinct advance on David's provision for the sheriff courts. All the details relating to the procedure to be followed in court, the summoning of the sheriff to the courts of Regality, of Barony, the reasonable requirements of summonses, the demand for equity;—these are all indications of an enlightened administration. Not so necessary or enlightened seems the rule which required a dissatisfied litigant who desired to intimate his intention to appeal to do so 'without turning his feet.' 'And gif he turnis the taes of his fet quhar the helis stud before that he gayn say that dome be certane resonis and that be witnest by the court afterwart he sal nocht be hart till agayn say that dome all thocht that dome be plainly in the self fals.'⁵ William laid down rules to be observed in Trials by Duelling;⁶ and recognised the decrees of the *judices* of Galloway regarding 'breakers of the King's Peace,'⁷ all which provisions continued in force throughout subsequent reigns.⁸

The adaptation of Glanville's code to Scottish needs as given in *Regiam Majestatem* may have been later than William's time, but the *Regiam Majestatem* presents certain features strongly suggestive of this reign. Scone is mentioned as a place of warranty in both *Ass. Will.* and *Reg. Maj.*; and yet, in point of fact, Scone disappears as a separate sheriffdom some time *circa* 1228. William Blund was sheriff of Scone and Perth about that time.¹ Perth thereafter takes the place of Scone. In recapitulating, as William did, the statute of David against

⁵ *Attrb. to William, A.P. i. p. 260; Frag. Coll. A.P. i. p. 742.*

⁶ *Ass. Will. xxii. (3); Frag. Coll. c. 29.*

⁷ *A.P. i. p. 378.*

⁸ *Quoniam Attachiamenta*, coeval probably with the later years of William, contains in addition to the older rule the following points: 'If the aggrieved were absent from the Court which pronounced doom and found security with the Coroner and lodged his appeal within forty days, his case would be retried. If successful the suitors of the inferior court were fined—one fine being imposed upon the Baron's Court; but if a Sheriff's Court—each suitor was fined £10, this distinction being due to the fact that the Baron's was a 'vulgar' court whereas suitors in the Sheriff's Court represented Barons 'quos leges conduntur in regno debent esse magis discreti ad cognoscendum leges conditas per seipsos quam populus laicus aut vulgaris' (*A.P. i. p. 649*).

¹ *Reg. Prior. St. Andr. p. 257.*

Cattle Stealing, *Regiam Majestatem* takes no notice of *Ass. Wil.* c. 24. A draftsman later than William's reign would surely have done so.

Though the Lateran Council had in 1215 decreed the abolition of trial by ordeal of water and of hot iron, its actual disappearance from the Scottish Code was not accomplished until the reign of Alexander II.³ In consequence of that Act the Visnet comes into more prominence. The *Visnet*, Assize or Jury, an important feature of the Sheriff Court, has its origin in the reign of David I. Then it was the duty of the sheriff to leave the court while the Visnet considered its verdict. That done the sheriff returned to receive from the Forspeaker of the Visnet, their decision. While there was no set rule fixing the number of the Visnet, there was a regulation requiring unanimity from twelve of them. If this could not be done by the originally selected Visnet they were increased or altered until the requisite minimum was obtained. The suitors, not the judge, decided the case before the Court; but exception was made to this rule in actions where the suitors 'were ignorant of the law.'⁴ The suitors whose judgments were reversed on appeal were each liable to a fine of £10, 'because barons ought to know the law.'⁴ The practice of the sheriff trying causes without a Visnet did not begin until the early years of the sixteenth century.⁵ An exhaustive account of the Visnet is given by Sir Philip Hamilton Grierson in *Scot. Hist. Review* (vol. xiv. pp. 1-18). The Visnet did not, however, apply to Fife or to Galloway where Celtic customs continued: the latter province being expressly exempted from the Act of 1244, 'Establishing Indytements' 'because their laws are different.'⁶ Questions of Disseisin which, though allocated by David to sheriffs, had been since then in the province of the Justices, were by Alexander II. permitted to the sheriff.⁷ Persons charged with robbery, theft, ravishing, manslaughter, or any other misdeed could be challenged to answer by battle at the Brig of Stirling by knights, knights' sons, or freeholders. Such challengers might do battle vicariously by a champion. 'Carles,'

³ *A.P.* i. p. 400. An instance of the retention (by Church courts) of Compurgation, so late as 1549, occurs in Aberdeen, where two accused 'purged' themselves of a charge against them by their own oaths and by the oaths of certain compurgators (*Antiq. Abdn. & Bnff.* iv. 487).

⁴ *Quon. Att.* c. 12; *A.P.* i. p. 650.

⁴ *A.P.* i. p. 649.

⁵ Littlejohn, *Sk. Ct. Rec. of Abdn.* i. xxxvi.

⁶ *A.P.* i. p. 403.

⁷ *A.P.* i. p. 400.

who were not freeholders, had to fight in person, unless their overlord chose to intervene.⁸ In this reign the Laws of the Marches between England and Scotland were examined by twelve English and twelve Scottish knights, and by the Sheriffs of Berwick, Roxburgh and Edinburgh, and the Sheriff of Northumberland.⁹ The additions to the sheriffdoms made by Alexander II. were Peebles, Selkirk, and probably Dumfries.¹⁰

The third Alexander abandoned the policy of his predecessors in the organisation of Southern Scotland. William had tried to break up Galloway by cutting off Carrick;¹¹ and giving to it separate jurisdiction. Alexander II. had demarcated Dumfries and Nithsdale; Annandale, which had been in the De Brus family since the time of David I., was further set apart as a lordship or Regality for Robert de Brus by Alexander III.;¹ Wigtown was erected into a sheriffdom and placed under Alexander Comyn, Earl of Buchan.² The castle which that king built at Kirkcudbright was placed under the care of John Comyn, son and successor of Alexander, as sheriff.³ Galloway was thus brought into the established order of Regalities and Sheriffships; but, as events proved, the attempt to introduce the ordered system of sheriffships with Anglo-Norman laws was for more than a century later premature. Thomas Fleming, second Earl of Wigtown, was glad to sell in 1372 both sheriffdom and earldom to Archibald Douglas, Earl of Galloway and Lord of Annandale.⁴

The reign of Alexander III. is an important landmark in the history of the sheriff. To it we owe the earliest records extant of inquisitions taken by sheriffs and their suitors (1259-1266).⁵ The accounts rendered to the Exchequer show the revenues accounted for by the sheriffs and the nature of their expenses; some of them are instructive on account of their record of the preparations made to repel Haco's invasion; and the steps taken to fortify the castles; and the mobilization of men for the army.⁶ For, with all their judicial work, the sheriffs were

⁸ *A.P.* i. p. 400.

⁹ *A.P.* i. p. 414.

¹⁰ *Reg. Glasg.* No. 150; *Lib. de Calchon*, No. 218.

¹¹ In 1186 Carrick was gifted to Duncan, son of Fergus, lord of Galloway (*Hist. MSS. Com. 5th Rep.* 613), who, between 1225-'30, was created Earl of Carrick (*Lib. de Melros*).

¹ *Nat. MSS. Scot.* i. 39.

² *Exch. R.* i. p. 22.

³ *Ex. R.* i. 39, 48, 49.

⁴ *Reg. Mag. Sig.* vol. i. No. 507.

⁵ *A.P.* i. pp. 97-102.

⁶ *Exch. R.* i. pp. 18 and 89.

pre-eminently military officers and overseers. Their territorial armies were kept in order by weaponshaws which the sheriffs were bound to hold at stated times.

In his brief reign John Balliol created sheriffdoms. These were Bute, Kintyre, Lorn and Skye. Neither Balliol nor Sir William Wallace made any material change in the sheriffships, though, according to Blind Harry, Wallace appointed 'Scherrais that cruell was to ken, And Captans als, off wyss trew Scottis men.'⁷ Edward I. applied his mind seriously to the administration of Scotland. After eight years of administration by approved sheriffs and constables (except in the far north and west) he drew up the elaborate Ordinance of 1304 by which he adhered to the laws of David I. and his successors, but expressly forbade the observance of the laws of the *Bretts & Scottis*—a vain decree. The Ordinance, and the Writs and Returns to Edward's Exchequer from 1296 to 1307, form a landmark in the history of the sheriffs, showing not only the sheriffdoms and the revenues derived from each, but the frequently misplaced reliance upon sheriffs selected because of their apparent loyalty to the English king.⁸

The MS. discovered by Miss Bateson in Corpus Christi College seems to be the scheme of an English adviser—a serious departure from Scottish precedent, proposed for Edward's approval. Had it been adopted there would have been, according to this document, 'In every sheriffdom . . . a sufficient sheriff by the advice and election of the good people of the country.'⁹ In the Ordinance issued and recorded in the Public Archives and published in the Record Edition of the Scots Acts there is no mention of election of sheriffs by the people. So far is Edward from leaving the appointment of these important officials to the desires of the 'good men' of the sheriffdoms that he ordains that 'The sheriffs be of those living in Scotland either Scots or English, the most sufficient, most suitable and most profitable for King, People and the maintenance of peace, and removable by the king's Lieutenant and the Chamberlain at their discretion.'¹

The most important strongholds Edward entrusted to his own tried followers, leaving them to select the sheriffs of their

⁷ Blind Harry, *Wallace*, bk. vi. 791-2.

⁸ *Cal. Doc. Scot.* ii. *passim*.

⁹ *Scottish King's Household* (Scot. Hist. Soc., vol. 44, p. 42).

¹ *A.P.* i. pp. 121-122.

respective sheriffdoms, for which appointments the English Guardians were to be responsible. Thus the Chamberlain, as Captain of Berwick Castle, 'mette dessous luy tiel pur estre viscunte de Berwwyk pur qui il voudra respondre.' The King's Lieutenant had in his charge the Castles of Roxburgh and Jedburgh. John de Kingston had charge of Edinburgh Castle, while Jue (or Ivo) de Aldeburgh was Sheriff of Edinburgh, Haddington and Linlithgow; Peter Lubaud, Constable of Linlithgow; William Byset was Constable and Guardian of Stirling Castle and sheriff—the garrison of the Castle being under the command of the King's Lieutenant, and the Chamberlain, on their arrival in Scotland. The castle and sheriffdom of Dumbarton were again bestowed upon John de Menteith.

The other sheriffships he allocated to the Scots or Normans settled in Scotland prior to Edward's arrival, and who had taken the oath of allegiance to him, and who in most instances were in office during the Edwardian rule.²

The creation by Robert I. of Argyle as a sheriffdom, in or about 1326,³ had far-reaching results. The growth of that ultimately wide administrative area was gradual. Lorn was merged in it in 1469 (after an agreement with Lord Lorn),⁴ and Tarbert which, *circa* 1504, had absorbed the sheriffdom of Kintyre, was also added.

Robert I. made a few changes in the constitution of the sheriffship: one, highly important, was the Act forbidding sheriffs and other officers of justice from acting in the courts of their sheriffdom as 'sustainers or maintainers of mutis.'⁵ The judges—sheriffs and others—had evidently (as in France) been in the habit of acting both as judge and advocate.⁶ Robert I.

² Cf. Lists in *Cal. Doc. Scot.* ii.

The histories of some of Edward's Scots sheriffs, as indicated by entries in the *Calendar of Documents*, are interesting alike for the light value of their oath of fealty and for the varied career of each individual. Mention may be permitted of three: Sir Simon Fraser, Sheriff of Peebles, 1264-1287 (?), who, rebelling in 1302, was exiled by Edward (*Cal. Doc.* ii. No. 1691); Sir Patrick de Graham, Sheriff of Stirling, 'a goodly knight who fell in Battle...'; and Sir Malcolm de Innerpeffry, Sheriff of Clackmannan and Auchterarder, 1288-1305, who, having championed Bruce, fought at Methven, was captured and imprisoned in the Tower of London (*Cal. Doc.* ii. No. 1858).

A.P. i. p. 125.

³ *Reg. Mag. Sig.*

⁴ *Hist. MSS. Com. 4th Rep.* 474.

⁵ *A.P.* i. p. 472.

⁶ In France, 'Les magistrats pouvaient aussi plaider pour autrui et même exercer la profession d'avocat avec salaire, mais en dehors de leur ressort' (*Glasson*, vi. 349).

also tried to get his Galloway subjects into line by permitting them—if they chose—to submit to trial by Visnet instead of their customary Ordeals or Purgation⁷; he required the sheriffs to attend to the summoning of barons and freeholders to Parliament;⁸ and to the publishing of the laws passed.⁹ Robert's Chancellor was Bernard (de Linton), Abbot of Arbroath, and Sheriff of Forfar;¹⁰ to whose care, in having them entered in the Abbey's Cartulary, we owe several of the Acts of that reign.¹ The Legislature sought to raise the standard of justice by several measures: one directing sheriffs to do nothing against the statute or the common law of the realm even though ordered by precept under the king's Great or Privy Seal or Signet.² The sheriffs, however, to judge by the statutes directed against them, were prone to negligence and corruption, evils which continue in later times, in spite of the checks attempted—by the Court of the Justiciar and the Chamberlain (before which opportunity was afforded those having a grievance against a sheriff—or against one of his officers—to state his complaint); and by review of all decisions by Parliament.³

In the same period there came into prominence (though he is mentioned in the twelfth century) the coroner, an officer partly associated with the sheriff, partly with the justiciar. The sheriff was bound to deal with all prisoners delivered to him by the coroner.⁴

In spite of the number of sheriffs and of the efficiency of the Scoto-Norman system of laws (of which the Visnet or Assize of Suitors was a central feature), Celtic legal practice prevailed in many parts of Scotland in the fourteenth century. Edward I. had tried to put it down in his Ordinance of 1304, and Robert I., who was not partial to it, had sought to supersede the Celtic system in Galloway by granting there 'a good and faithful assize of the country with freedom from making purgation or acquittance according to the ancient laws of Galloway.'⁵ The Parliament of 1384 went further and required the Earls of Carrick,

⁷ *R.M.S.* i. No. 59.

⁸ *A.P.* i. p. 54; for Form of Summons, see *A.P.* i. p. 104.

⁹ *Ibid.* p. 466.

¹⁰ *R.M.S.* i. App. i. No. 76.

¹ *A.P.* i. p. 48.

² *A.P.* i. p. 509a.

³ 1369, *A.P.* i. pp. 508b and 535a.

⁴ Later—1487—the coroner could demand assistance of sheriff and baron in the arrest of those on his porteous roll and obtain surety for their appearance at the next Justice Eyre (*A.P.* ii. p. 176).

⁵ *R.M.S.* i. No. 59.

Douglas and Fife to take the 'great oath upon the Holy Evangelis'⁶ that they would observe the ordinary laws of the land in their respective territories of Carrick, Annandale and Galloway, and Fife earldom.⁷ Each of the earls took the oath, with a reservation in favour of himself and his family. The Earl of Fife granted back to the king, for the betterment of the law and good of the country, the privileges of the law of Clan Macduff.⁸ Yet in spite of all this the old Celtic laws continued to be observed for more than two centuries after this date. The Earl of Carrick actually received a royal charter in 1455, conferring upon him the privileges attached to the head of Clan Kennedy, with right to judge in all matters affecting the clan, of leading and controlling the said clan, of weaponshawing and all other services belonging to the headship of the clan.⁹

The Earldom of Fife had provided certain historic cases which turn upon this question of special jurisdiction. By the law of Clan Macduff all persons related to the clan were to have no judge in any action, treason excepted, but the Earl of Fife only, the chief of the clan. Members of the clan had the right to appeal home to their own clan, provided they found security to present 'thaimselfis to judgment for thir thrie headis: (1) thai promisit to preif that thai war off the clane of makduff and thairfoir aucht to haif the former privilage; (2) Next that thai haif done no odious cryme quhy thai suld be exclutit from that privilage; Thridlie quhatsemeuir, conforme to the law the chief of the clane sall enjoyne, thai sall obey it.'¹

In 1391 Sir Alexander de Moray was indicted before the justiciar at Foulis for the murder of William de Spaldyne. Moray, represented by Sir Bernard de Hauden and John de Logy as prolocutors, protested that since he had been repledged to the Court of Robert, Earl of Fife, by reason of the law of Clan Macduff, the justiciar had no jurisdiction over him.² The justiciar adjourned the court in order that he might learn the opinion of the Chief Justiciar. Unfortunately the record of the issue appears to be lost.³

⁶ This was the usual form of oath taken by the Assize and by others in court.

⁷ *A.P.* i. p. 551.

⁸ *A.P.* i. p. 551.

⁹ *Hist. MSS. Com.* 5th Rep. 613.

¹ Alex. Arbuthnott, Principal of King's College, Aberdeen, 1538-1583, quoted in *Hist. MSS. Com.* 8th Rep. 297.

² *Reg. Ins. Miss.* 1.

³ *Hist. MSS. Com.* 3rd Rep. p. 417.

Two other claims to be tried by the law of Clan Macduff, one in 1420, the other in 1548,⁴ bear witness to the persistence of the old customs in the presence of a newer system of judicial procedure. The former of these two cases was the trial of Hugh Arbuthnott for the murder of Sir John Melville, the highly unpopular sheriff of the Mearns. Arbuthnott claimed the privilege of the law of Clan Macduff, and the claim was allowed. It is satisfactory to find that the judges were able to settle the feud between the families of Melville and Arbuthnott.⁵

Such laws as that of the Clan Macduff were not the only relics of the earlier age that remained in the court practice of the period covered by the three centuries from 1300 to 1600, and beyond 1600.⁶ The judex continued to act in the courts of justiciar, sheriff, baron, and of churchman throughout these centuries. Originally the sole judge and expounder of the tribal laws, and incorporated by David in his legal scheme, the judex, before finally falling to a humble office, had sat along with the sheriff and other judges in their courts, probably as assessor, his presence valuable both for his knowledge of customary law and of the vernacular; and it was he, and not the sheriff, who pronounced the doom.⁷ Until 1429 the Dempster was styled in all records 'Judex.'⁸ The family of Dempster of Caraldistoun who inherited the office, borne in their name, may have derived it from Keraldus, judex in Mearns, who *circa* 1230⁹ had lands which retained his name in Keraldistoun. It would be conclusive could the line of Dempster of Caraldistoun be traced without a break to the Kerald of 1230; but unfortunately the earliest charter of the Dempsters was lost before 1379, when Andrew Dempster obtained charter from Robert II. of the office 'Judicis nostri . . . in Parliamentis nostris quam justiciarie

⁴ Balfour (Sir James), *Practicks*, p. 511.

⁵ *Hist. MSS. Com. 8th Rep.* 297.

⁶ The Chief of Clan Kennedy enjoyed till at least 1454 right to judge 'in Calumniis quam in aliis articulis negociorum' in all 'pleas affecting the Clan' (Charter copy in *Hist. MSS. Com. 5th Rep.* 613).

The Brehon, also styled 'Breive,' is found doing duty in Lewis in the seventeenth century (*Highland Papers* (Scot. Hist. Soc.), 2nd ser. vol. 12, pp. 272-274).

The Scandinavian laws governed the subjects of Scotland in Orkney and Shetland until 1611 (*Spald. Club Misc.* v. 37).

⁷ In a Barony Court held in 1385 'through the mouth of Robert Louranson, then demstare of oure lorde the King's Court (and of the Barony Court) it was gyffin for dome that . . . ' (*Hist. MSS. 3rd Rep.* 410).

⁸ *A.P.* ii. p. 18.

⁹ *Reg. de Aberb.* p. 162.

ac curiis vicecomitis nostri de Forfare'—which office (the charter proceeds) had been in possession of Dempster's ancestors *quod evidencie sue de dictis feodis retroactis sunt distructe*.¹ Whether the Dempsters were lineally descended from Kerald or not, the official described in the Cartularies of the thirteenth and fourteenth centuries as *judex* is shown to be identical with that given later as 'dempster.'

The survival of the dempsters in the Scottish courts till the eighteenth century had no parallel in the English Courts, but the deemster remained in the courts of the Isle of Man after the Norman system had been introduced, and still remains. The deemsters were the sole repositories of the unwritten or 'Breast Laws' of that island, and Sir John Stanley caused these to be recorded when he was Lieutenant of the Island in 1417. According to the constitution the lieutenant had to inquire of the deemster the laws, and the penalties attached to infractions of the unwritten laws.²

Unlike the Manx deemster, the Scots dempster has long since vanished from the courts. His decline and fall were due to his having outlived his usefulness as an expert in law and as an interpreter.³ The later dempsters were mere legal furniture in the Scots courts, retained for the formality of pronouncing doom, which being usually done badly and often ludicrously, these officers were eventually dispensed with altogether.⁴

This digression from the sheriff to one of his court serves to throw light on the state of the Judiciary in Scotland during the period under review. The legislation of the fifteenth century which deals with legal administration does not touch the dempster, except in directing procedure in appeals from his doom. The judge having indicated his judgment or opinion the dempster pronounced the doom. His opening pronouncement: 'This Court schaws for law and I gif for dome' . . . was uniform in every court. In 1429 it was enacted that whosoever 'falses a doom' shall not remove out of the place where he stands when

¹ R.M.S. i. No. 758.

² *Manx Soc. Trans.* iii. *passim*.

³ In 1544 in the Barony Court at Dunrobin the bailie 'by the mouth of Murquhard Murray in the Irish or Gaelic tongue (*Hibernica Lingua*) explained the effect of the letters under the signet of Mary Queen of Scots upon the question before the Court' (Notarial Instrument of 1544 in *Hist. MSS. Com.* 9th Rep. 191-3).

⁴ There is no account of the disappearance of the dempster from the Sheriff Court. His dismissal from the Court of Justiciary dated from 1712 (*Acts of Adjournal*, March 31, 1712).

doom is given nor speak to anyone till the doom is again called,⁴ and that shall be within the time that a man may go easily forty paces, and that to be counted after the consideration of the judge and court. And if he be again called by an advocate of the party, he being admitted once to speak for that party in court by name and surname, it shall not be necessary to rehearse his own name nor the dempster's in the doom falsing, but only to say that the doom is 'fals, stinkand, and rottyn in the selff.'⁵

The procedure of Falsing has recently been made available by Sir Philip Hamilton Grierson in his edition of Habakkuk Bisset's *Rolment of Courtis*, written *circa* 1616.⁶ There the seventeenth century lawyer drew up as 'profitable and necessar for understanding of the auld lawes' the 'Auld Used Civile Procese,' of which Falsing of Domes occupies twenty chapters.

The process of Falsing, based upon the Acts of 1429, 1471, and 1503,⁷ required the Falsifier to ask an instrument of the falsifying of dome, upon which the judge caused the Rolment of all the process to be read in court in presence of the parties, then closed it with 'ane throch of paper' under the seal of the appellant or under a borrowed seal, along with the judge's seal; writing on the back of the paper: 'Memorandum, this is the rolment of this courte, Touching the falsing of the Domes that A of B. forspeaker to C falsed in the said courte on (stated date).'

¹

The judge also recorded on the back of the paper the reasons for the judgment. The document was lodged with the clerk of the Superior Court forty days before hearing.

In the appeal court the falser of the dome had to give on paper his reasons against the dome, the instrument being then sealed and on the back the following; Thir ar the reasons that A of B assigned for him why the dome given in the court of E against

⁴ 'Again called' = Appealed.

⁵ *A.P.* vol. 2, p. 18.

⁶ *Scottish Text Soc.* n.s. vol. 10, p. 179.

⁷ *A.P.* ii. pp. 18, 101*b*. The Act of 1503 changed the form of expression used in Falsing to: 'I am grattumly hurt and injurit be the said dome therefore I appele and find ane borcht in the officiar's hand of the court to persew the said appellatione conformand to the law made of before' (*Ibid.* pp. 246, 284).

¹ A good example of the procedure of Falsing is found in the Stewartry Court of Strathearn in 1475, when James Heryng 'forspeaker for Wylzam Talzour says to ye Vilzam Reyde, demster of the Stewart curt that the dowme that thow has gyffyn with thi mowtht is of no wayll, is false and rottyn in the self be cause it is gyffyn in the contrare of the curse of comone law, protestand for may rasonis to schaw when myster is,' etc.—then giving security to the Serjeant and attending to the other formalities required by law' (*Hist. MSS. Com.* 3*rd* Rep. 418).

him on (date) was evil given and weill again said.² This document was then, with the other process, presented to the judge, who directed a precept to be served upon the mair to summon the judge of the lower court to appear at the higher court on a certain date to maintain the dome and to bring with him the rolment of the said court pertaining to the cause and with him the clerk, serjeant and suitors then present in court to make their record and to declare how the matter stands. The precept was read by the mair at the manor house of the questioned judge who was called upon to obey the summons. The officer then endorsed the summons with the statement that he had read the summons to the baron in presence of certain (named) witnesses. At the time fixed for hearing the cause the forspeaker asked the judge to cause call the judge and the suitors of the lower court to maintain their dome against him. The judge then caused the serjeant to call thrice, after which—if there was no response³—the clerk read the record of the summons and the evidence of its proper execution. The falser of the dome was then required to find security to be lodged with the serjeant, ‘I find ane borgh in thyne hand serjeand and here ane borgh to follow my borgh that by the reasons now read by the clerk of this court and as for fault of appearance of the baron of R. with his suitors summoned to this court to maintain this dome given against me in his court of R. on (date) touching the cause of . . . that that dome was evill given and weill again said.’ The court then proceeded to business, first removing the falser of the dome who remained outside until the said dome was made ready, then recalling him to hear the judgment. When both parties were present the falser of the dome was called on first to enforce his reasons, followed by the judge and his suitors—defenders—whose reasons the falser might contradict but ‘neither of the parties may add or minute more reasons than those given into court.’

The parties to the action had to leave court when judgment was being considered, after which they returned.

If the new dome was against the falser of a dome given in the Baron Court or of any other court, the falser of the dome was subject in as many unlaws of that court where the dome is falsed

² Cf. French practice of same period where judgment on appeal was either (a) *bene judicasse* et (b) *male appellasse*; or (a) *male judicasse* et (b) *bene appellasse* (Dr. Neilson in *Acts of the Lords of Council*, ii. xxxii. quoting from Olim).

³ A fine of £10 was exacted from absentee suitors (Transcript *Justice Eyre Records*, iii. 286).

as there were suitors that said with the dome in the first court, and in one unlaw of that court wherever it be where the dome is discussed and falsed; and had to find caution (borgh) for the said unlaws before leaving court.

All domes falsed in the baron court had to be discussed before the sheriff in his court, and all domes falsed in the sheriff court had to be discussed before the justice in his next eyre within forty days; all domes falsed in the Justice Eyre were discussed in Parliament.

Falsing of domes, the customary method of appeal to a higher court in the fourteenth and fifteenth centuries, was one of the principal duties—if not the principal duty—of Parliament. Appeal to the king had been the privilege of the subject from the time of David I.—in the thirteenth century to king and council.¹ In the fourteenth century a more systematic scheme is evolved in the appointment by king and Parliament of lords auditors *ad audiendum et terminandum supplicationes et querelas que in Parlamento non fuerant terminate vicecomiti et ballivis*.²

The earliest appellate Committee on Falsing of Domes '*ad deliberandum autem super judiciis contradictis*' (*quia visum est et decretum quod pauciores possint sufficere, sunt subscripti electi via pro parte cleri*)—9 churchmen; *pro baronis*, 25 laymen—is of A.D. 1368-9.³ Within a year of that enactment those elected '*ad sedendum et deliberandum super judiciis contradictis*'. . . by Parliament were to begin in the King's Court in the Monastery of the Friars of Perth and to continue *ut omnia judicia contradicta et pendencia et omnes questiones et querele que concernunt communem justiciam proponantur*.⁴

Parliament was regarded as the supreme law court. 'It is ordaynt that ilke yhere the King sal halde a parlement sua that His subjectis be servyt of the law the qwhilk sal begyn on the morne efter all hallow day for ther thre yhere to cum.'⁵

Professor Hannay has drawn attention to the similarity of the Court of Parliament to the inferior courts in the requirement of forty days' notice before trial in summonses. In one of the earliest recorded instances (1368) of cases *super judiciis contradictis*, an appeal from the Justice Eyre of Dundee—protest was made that Parliament had proceeded *per quatuordecim dies*

¹ (1282) *A.P.* i. p. 10; (1292) *Ibid.* p. 114.

² *A.P.* i. p. 513; *Lib. de Scon.* p. 125.

³ *A.P.* i. p. 506.

⁴ *A.P.* i. pp. 507-8.

⁵ *A.P.* i. p. 573.

instead of *quadraginta dierum spatium a tempore justiciarie*. This protest was sustained, the matter being referred to the next Parliament.⁶

The Act of 1425 remodelled the constitution of the Court; the Chancellor and certain discreet persons of the three estates were to have jurisdiction over all complaints, causes and quarrels falling to be determined before the King's Council.⁷

The process of Falsing of Domes died in the early decades of the sixteenth century. Bisset attributes its disappearance to the process of Reduction of Decrees and Sentences in the Court of Session; Stair states that Falsing of Domes was superseded by the 'excellent method of proceeding by Advocation';⁸ but the fact that the records of the Justice Eyres of the years 1493-1513 reveal an astonishingly small number of cases appealed by 'Falsing' suggests that the decline began earlier:⁹ a decline probably due to the facilities afforded the appellant from a sheriff's decision of proceeding to court of the King's Council¹⁰ without the formalities of Falsing. The provisions of the Court of Session, allowing appeals by way of Advocation, completed the extinction of the 'auld process' of Falsing of Domes.

The fifteenth century from 1424 to the close is conspicuous and distinguished beyond all other centuries by reason of the many enlightened measures which were then passed and by the constitutional changes affecting sheriffs and the lieges. Until about the middle of the century the Acts made tended to the enlargement of the sheriff's judicial functions; after that time these became abbreviated. For some of these measures the Scots legislators were doubtless indebted to their ally France. The sheriff, for example, like the bailli of France, had from 1436¹ to punish all robbers and murderers in his sheriffdom without waiting for private prosecutor or for written complaint; he had to provide poor litigants with an advocate;² the *Bailli*

⁶ *A.P.* i. pp. 504-5. ⁷ George Neilson and H. Paton, *Acta Dom. Conc.* ii. xxi.

⁸ *Instit.* More's edn. i. 241.

⁹ The Clerk of Parliament continued, however, to detail the Committee for Falsing Domes up to 1558.

¹⁰ *A.P.* ii. pp. 246, 254.

¹ The bailli 'recherchera les larrons, les meurtriers et les punira selon leurs méfaits' (Glasson, vi. 282-3). Until the Act of 1436 was passed thieves and murderers could not be punished unless a prosecutor appeared. From 1436 the sheriff could deal with such malefactors without warrant.

² *A.P.* ii. p. 8.

of France had from a much earlier time to exercise similar care.³

He was not to 'compound' with those convicted of theft⁴ nor engage in the sale of thieves, a species of 'trade' recognised by barons of these times;⁵ the sheriff was to extend his jurisdiction deferring neither to Burghs nor Regalities.⁶ Brieves were made of a less rigid type, and exception could not (as previously was the case) be taken to the length or the brevity of their tenor. The only requisites were that the names mentioned be legible and free of blots and erasures.⁷ Besides Brieves of Citation there were in 1429 Letters of Summons which were to contain the six points necessary to be 'rehearsed' in court.⁸ From 1469 these had to bear the King's Signet and be sealed by the summoner,⁹ and no brieves or letters or decrees were of any validity which did not bear the sheriff's or the bailie's seal,¹⁰ a law evidently made to end the use of false documents.¹ The sheriff's conduct, which, under an Act of 1369, could be challenged by an aggrieved person before the Justiciar and the Chamberlain with an Assize,² was made part of the regular

³ 'Il doit veiller à ce que tout plaideur ait un avocat même s'il est pauvre ou s'il plaide contre un puissant personnage' (Glasson, vi. 282).

⁴ *A.P.* ii. p. 23.

⁵ Cf. Charter by John Monteith, lord of Knapdale, in favour of the lord of Lochaw, conferring *inter alia* the right on donee and his heirs of selling thieves (*Hist. MSS. Com. 4th Rep.* 476).

⁶ *A.P.* ii. p. 24.

⁷ This Act seems to have been repealed in 1491, when it was 'Statute that na Brevez be given to na pairties but eftir the forme of the brevez of the Chancellary usit in auld tymes of before' and the form 'be observit and kept without innovation or eiking of new terms'—Any such brieves were to have no force (*A.P.* ii. 224; *A.P.* ii. p. 17).

⁸ The six points were: (1) name of summoner; (2) name of person summoned; (3) name of him before whom the summoned will appear; (4) statement of facts; (5) date when person summoned must appear in court; (6) name of place where court will be held (*Reg. Ma'* i. c. 5). A summons, moreover, had to be served between sunrise and sunset, before witnesses, and never on a Sunday or Day of Festival (*Q.A.* xlv.; *A.P.* ii. p. 656).

⁹ An appeal of 1470 by Thomas Allardes was made on the ground that the 'Summoundis war not signet nor selit be the summoundare as it ought to be of resoun as was actit in the last Parliament' (*Hist. MSS. Com. 5th Rep.* 630). Another case occurred in 1497 when the forspeakar of the Lord Ruthven (Sheriff of Perth Burgh) succeeded in his objection to a summons to which there was 'nowther sele nor signet on the summyn' (*Acta. Dom. Conc.* ii. p. 93).

¹⁰ *A.P.* ii. 95.

¹ Cf. *Hist. MSS. Com. 5th Rep.* 630.

² *A.P.* i. 508b, 535a.

routine of the Justiciar at his Eyres. The last day on these occasions was devoted by the Justiciar and his Assize to an investigation of the conduct of the sheriff.¹

Protection was also afforded the litigant who felt that his case before sheriff or other inferior court had been unfairly dealt with, by permitting him to appeal to the Lords of Session who, if they found that the sheriff or other officer had 'procedit wrangously, reduced and annulled the process,'² made the sheriff pay the expenses of the complainer and made him liable in punishment by the king. But if the complainer was found to be wrong in his complaint he had to pay the expenses of the officers and those of the other party. If unable to do so he was imprisoned.³

C. A. MALCOLM.

¹ 1487, *A.P.* ii. p. 177. The Judges of the High Court of Justiciary still observe the ceremony of inquiring on the last day of each circuit whether anyone has complaint to make against the sheriff.

² For an 'unjust process' the Steward of Kirkcudbright was tried by the Justices in 1513 (*Transcript of Records of Justice Eyre*, iii. 207). The result of the case is not given.

³ *A.P.* ii. p. 178.

(*To be concluded in next number.*)

Reviews of Books

EARLY SOURCES OF SCOTTISH HISTORY, A.D. 500 TO 1286. Collected and translated by Alan Orr Anderson. 2 vols. Pp. clviii, 604; vii, 805. La. 8vo. Edinburgh: Oliver & Boyd. 1922. £3 10s.

MR. ANDERSON has produced a work of permanent value as a book of reference by his careful collection and translation of the most important sources of the early History of Scotland. To the average English reader Scottish History previous to the fourteenth century barely exists. Even to the average Scottish reader the history of the kings who preceded Alexander III. is but little known. Most would hesitatingly mention Macbeth, and few of them would know his dates. Mr. Anderson's work ends at the point at which the work of most Scottish historians begins, viz. in 1286, at the time of the conflict with England, which resulted in the independence of Scotland. 'The relation between events cannot be established unless the order of events is known,' writes Mr. Anderson in his Preface. With this right point of view he has set himself to arrange the various sections of almost innumerable chronicles in strict chronological order, as far as the chronology can be established. The words of the chroniclers are given in the main text. Below are footnotes giving the fruits of Mr. Anderson's research and his comments on the historical sources which he is treating. It is not surprising to learn that these volumes have occupied their author for more than seven years. They have involved translations from sources in Latin, in Old Norse and in Celtic languages, and Mr. Anderson's treatment of his sources has the same scholarly touch when he is dealing with the Annals of Tigernach, which go right back to the earliest part of his theme, as he shows when using the Chronicle of Lanercost for those later periods which bring his task to a close.

One of the most valuable sections of the book is the Bibliographical Notes. There is distinct novelty about this section. It is something a great deal more than the usual bibliography. For some of the better known authorities mentioned it contains just a brief bibliographical statement; but for many it contains a descriptive summary of the chief MSS. or the most useful editions—sometimes two or three pages being devoted to one work. For many scholars who are working on Scottish History the bibliographical section will be even more valuable for reference than the extracts from the sources.

It may well be hoped that one result of the publication of this work on the Early Sources will be to direct the attention of workers to the centuries lying behind the period from which their work generally begins, in order

that they may get a clearer view of the way in which in Scotland, as in every country, the present stands rooted in the past.

It is not altogether easy in a brief review to do justice to an important reference work, especially when the main body of it consists of extracts. It must suffice to say that in future any scholar wanting to ascertain the main facts about any particular episode in Scottish History up to 1286 will do wisely to consult first of all the chroniclers themselves as given by Mr. Anderson, and if he wants still further information, Mr. Anderson's notes will set him in the right direction.

If the Carnegie Trust had done nothing else except to make it possible for this book to be published—and it is a work which could never have been produced without a subsidy—that Trust would have deserved much gratitude from historical students.

WALTER SETON.

MAZES AND LABYRINTHS. A General Account of their History and Development. By W. H. Matthews. Pp. xviii, 254. With 151 illustrations. 8vo. London: Longmans, Green & Co. 1922. 18s.

THIS volume, which the author modestly describes as 'a little essay,' has every sign of being a standard book of reference on Mazes and Labyrinths. Beautifully illustrated and printed in good clear type, it contains an index and an excellent bibliography.

Beginning with that Labyrinth 'greater than words can tell,' constructed by the Twelve Kings of Egypt hard by the lake so much admired by Herodotus, Mr. Matthews deals with the Cretan Maze and with successive examples in all times and countries—Labyrinths of stone, trees, turf, on hill-tops and sea-shores, in gardens and churches, ending only with the brass Labyrinths of pocket size wherewith Victorians played 'pigs in clover' to distract their minds from Empire building or the study of Mr. Oscar Wilde. Particularly interesting are the chapters on 'Stone Labyrinths and Rock Engravings' and on 'The Dance or Game of Troy.'

It is really a charming book. The learned will feel their memories refreshed and the average reader will lay it down with regret.

JESSICA BAIRD SMITH.

MARY QUEEN OF SCOTS AND THE BABINGTON PLOT. Edited from the Original Documents in the Public Record Office, the Yelverton MSS. and elsewhere. By John Hungerford Pollen, S.J. Publications of the Scottish History Society, Third Series, Vol. III. Pp. ccxii, 184. 8vo. The Scottish History Society. 1922.

THIS is one of the most important additions to the innumerable books on the 'Daughter of Debate' which has recently been given to the world. Father Pollen's care, breadth of mind and manner of editing historical matter cannot be over-praised, and he is already a past-master of the history of the difficult period with which this work deals.

At the time the Babington Plot was hatched, the imprisoned Mary Queen of Scots was in a state of rigorous isolation. Sir Amias Poulet, her gaoler, had cut her off from the outside world to the utmost extent, and

save for the French Ambassador she had no source of political news at all. Walsingham, fearing her position as heir to the English throne might result in the eventual possession of it, which meant his own fall and that of his friends, desired her death, and was by no means scrupulous how this might be accomplished. So he favoured every sort of Popish renegade who might at any moment be a tool ready to his hand. Mary, on the other hand, in prison, was not in a position to know all about her agents, and had to take a good deal of their reputation for fidelity on trust. Thus she employed Thomas Morgan, a hotheaded Welshman, who had helped her to obtain certain arrears of her French dowry, in Paris. There he was (through Elizabeth's means) committed to the Bastille and in turn entrusted some of the Queen's confidence to Mr. Charles Paget, an 'inconstant fellow... true to no side.' It was at this time that plots were begun for a foreign invasion into England, and for the death of Queen Elizabeth. At this favourable occasion the spies of Walsingham encouraged the Scottish Queen to correspond with her fellow Catholics, and so destroy herself through their intelligence of her doings. The Catholic plots which threatened Queen Elizabeth may not have been very serious, but the lawfulness of her murder was talked of, and, as the Prince of Orange had been assassinated, Walsingham made the most of the threats. An Act of Association was got together threatening with death the person in whose favour the assassins plotted, and this Act, which was eventually legalised by Act of Parliament, was clearly directed against the imprisoned Queen Mary.

Now there came forward a clever but wholly unscrupulous man, Gilbert Gifford, who was so charming that the Spanish Ambassador refers to him as 'the gentleman.' He, posing as a sound Catholic, got to know of a plan made by hotheaded members of the Old Faith to free the imprisoned Queen. The plot took the form of the death of the English Queen and the liberation of her Scottish sister. The spy told Walsingham of it, and he willingly allowed a regular post to be established between the Queen, at Chartley, and Gifford and the plotters through a Burton brewer, called euphemistically 'the honest man.' He sent down to Chartley to assist in the reading of his letters a short-sighted pock-marked man named Phelippes, an ally of Gifford's, who was also a spy, and a noted expert in the knowledge of cipher-codes and in deciphering letters.

Catholic plotters came forward, headed by Ballard, a priest, and a Derbyshire squire, Anthony Babington, of a rather facile nature.

The rest is soon told. Queen Mary was caught. Longing to hear of the outside world and to be free, she (in spite of the advice of her secretaries) seized the opportunity of corresponding with Babington. Though his letter distinctly based his plot on the murder of the English Queen who was to be 'taken away,' the Scots Queen's reply only deals with her own release, and she in no word consented to the Queen's assassination. Father Pollen thinks she left this to chance, and does not apparently think (though he gives one example of a postscript forged by Phelippes which eventually led the Babington plotters to their doom) that the Queen's correspondence was tampered with before copies were produced at the trial. He says,

'If the assassination was a crime, Mary was not free from guilt. If it was not a crime but an inevitable incident in the struggle for liberty, Mary was free from blame.' In regard to the tampering with the letters the reader is still greatly left in darkness. Father Pollen himself says, 'Government in these days treated evidence with the same violence with which they suppressed individual liberty,' and quotes the French Ambassador who said, 'Those fine councillors of England never produce the original pieces, but only copies to or from which they add or substract what they like.' With this idea of 'evidence' and in view that no original letters were shown to the Queen of Scots at her trial, she was therefore perhaps right in her defence that she sought her freedom by help of foreign arms and never actually consented to a plot against the life of the English Queen (who sought Mary's life also) and was really being put to death for her own religion. Had she wavered in this, Catholic plots must have ceased and the Protestants could have had no handle against her.

But a foreign invasion was a vain dream of the rather foolish Catholic intriguers, and Burleigh and Walsingham seized their prey when they thought enough letters had passed, which, interpreted in their own way, would entrap the plotters and in the end enable them to get rid of the Catholic queen; and this, through the intimidation of her secretaries, both foreigners, they effected. They frightened Queen Elizabeth (who knew of their scheme) into the belief that her life was in danger by a plot which could never have been carried on except through their perfect knowledge or contrivance. It was a political scheme to trap a miserable prisoner detained unlawfully in a foreign country.

Father Pollen traces the plot with great skill. He shows the statecraft of Walsingham, the treachery of Gifford, the hopefulness, strivings, and quarrels of the Catholics, and the different views that existed then (as now) about political assassination. By his work we know more about the process of the plot than has been known before, the fatuousness of the plotters, the want of scruples of the spies, and the evil fate of some (though not all) of the worst of them. The correspondence is edited just as it should be, and everyone will be grateful to him for his masterly introduction.

A. FRANCIS STEUART.

MILITARY OPERATIONS: FRANCE AND BELGIUM, 1914. History of the Great War based on Official Documents; by direction of the Historical Section of the Committee of Imperial Defence. Compiled by Brigadier-General J. E. Edmonds, C.B., C.M.G. Demy 8vo. London: Macmillan & Co. 1922.

To write an official account of a campaign in the life-time of most of the leading actors in it is necessarily a more difficult task than to deal with events long enough past for the controversial points to have lost their acute and personal aspect. But in avoiding the controversial, in confining the scope of the work to a statement of facts without criticism, there is a two-fold danger. The first, and less serious, is that the narrative may become somewhat bald and unattractive; the second is that the lessons of the particular operations may be overlooked or insufficiently emphasized. General

Edmonds may be congratulated on having steered clear of the chief dangers in his path ; his story of the doings of the British Expeditionary Force in August and September 1914 is certainly neither bald nor uninteresting. It is a clear and well-proportioned statement of a really remarkable achievement : it sets forth the facts without exaggeration or any touch of the rhetorical in a way which enables its readers to appreciate how things were done and why they had to be done ; it gives the data essential to a critical study of the campaign of Mons and the Marne and Aisne without doing its readers' work for them or presenting them with ready-made comments to be passed off subsequently as their own conclusions. It has excellent maps, which show what is wanted and are not encumbered with the superfluous ; it is judicious, it is conspicuously impartial ; it manages to give the credit to a good many units and even individuals for episodes not as familiar as they should be ; and, thanks to the careful way in which all the available German sources have been utilised, it gives the story not only of what our troops and their allies were doing but of what their enemies were doing and thought they were doing.

There has been a great burst of literary activity on the German side. For hardly any other campaign can there ever have been so much material available from the principal actors as there is on the side of those who did not bring off the greater Sedan of 1914 that was to have altogether eclipsed the triumphs of 1870. It is fortunate that this is so, for it is largely from having the German story available that we can best appreciate what the British did, what the true strength was of the force which failed to overwhelm us at Mons and again at Le Cateau, how important and even decisive was the work of the British in piercing the screen with which von Kluck tried to hold it up on the Petit Morin and Marne, how narrow was the margin by which Sir Douglas Haig's First Corps just failed to effect a break-through on the heights of the Chemin des Dames on September 14th.

General Edmonds has used these German sources admirably. Naturally he can allow himself rather more freedom of speech in discussing the German strategy and the conduct of the German commanders, but he is conspicuously fair to the Germans ; 'losses,' he says, 'did not stop the German infantry in 1914,' and perhaps it is because he does not in any way belittle the Germans or conceal their undoubted military qualities that his tribute to what 'the first Five Divisions' accomplished is all the more effective. The British Expeditionary Force was only a handful in comparison with the forces Germany and France could put into the field. It is painful to see from what it accomplished how much more another couple of British divisions of equal value might have done in 1914, when in an unsettled and fluctuating military situation a small force had opportunities open to it which were denied to the much larger forces which arrived in France to find the war stabilised and both sides entrenched into an immobility that seemed immovable.

The campaign of 1914 has lessons, tactical, strategical, political ; this volume is indispensable as the preliminary to any serious study of them.

C. T. ATKINSON.

Terry : The Jacobites and the Union 243

THE JACOBITES AND THE UNION. Being a Narrative of the Movements of 1708, 1715, 1719, by several Contemporary Hands. Edited by Charles Sanford Terry, Litt.D. Pp. xii, 274. Crown 8vo. Cambridge : University Press. 1922. 10s. 6d.

THE FORTY-FIVE. A Narrative of the Last Jacobite Rising, by Several Contemporary Hands. Edited by Charles Sanford Terry, Litt.D. Pp. xii, 208. Crown 8vo. Cambridge : University Press. 1922. 8s. 6d.

THESE two volumes represent an interesting phase in the evolution of the literary presentation of historical material. In the clear, swift narrative of Macaulay the stream sweeps on with unbroken surface. The historian of to-day diversifies his narrative with quotations from letters, diaries, pamphlets, and official documents, with the twofold object of conveying to his readers something of the atmosphere of the period with which he is dealing, and of imparting to his story something of that variety which the novelist obtains from the employment of dialogue. In Professor Terry's volumes a number of the actors in the Jacobite dramas speak of what they have seen and known : the chief function of the editor is that of unobtrusive liaison officer.

It is a method which has certain obvious advantages. It brings together in a convenient form material gathered from many different sources. The narratives present contemporary views of politics and of military operations. They reflect, though with varying degrees of vividness, the glamour which the Stewart cause cast over its adherents. They contain, too, those intimate personal touches which gleam with undimmed lustre across the centuries : such as the swift and ignominious discomfiture of a certain Lieutenant of the Blair Castle garrison, 'who being of a timid temper with a constitution unpaired by drinking' consented, undeterred by the deprecatory attitude of his brother officers, to approach his irascible old commandant—a veteran of Marlborough's wars—with the Jacobite summons to surrender ; or the militant loyalty of a worthy old lady of Kendall : 'Madam Belingham (who was godmother to Thomas Foster) and tabled in Mr. Simpson's house, would not admitt her said godson to see her, and he going upstairs for that intent, she met him on the stairs, gave him two or three boxes on the eare, called him a rebel and a popish toole, which he tooke patiently.'

But this method has its disadvantages. It postulates, in the first place, no slight acquaintance, on the part of the reader, with the processes involved in weighing and judging historical evidence, for Professor Terry provides practically no guidance concerning the relative value of the various accounts which have been pieced together to form the narratives : the synoptical biographies of the various writers of memoirs and the laconic references to the necessity for caution in dealing with the Memoirs of the Master of Sinclair, the Memoirs of Murray of Broughton, and Maxwell of Kirkconnell's Narrative of Charles Prince of Wale's Expedition, emphasise the necessity for a clear exposition of the problems that must be faced by every student of history who desires to deal effectively with original sources.

Had he provided an adequate critical examination of the sources he has

employed, Professor Terry would have appreciably increased the value of these volumes for the student of history. G. P. INSH.

SEIGNEUR DAVIE. A Sketch Life of David Riccio (Rizzio). By A. Francis Steuart, Advocate. Pp. viii, 150. With four illustrations. Crown 8vo. London and Edinburgh : Sands & Co. 1922. 4s. 6d.

ANY new volume concerning the career of Mary Queen of Scots is welcome, provided that it fulfils two conditions which are characteristic of this short study. The author must have his period at his finger ends, and possess the faculty of presenting his facts in a fresh and attractive form. For his sketch of Seigneur Davie's life Mr. Steuart has no need to discuss the Queen as sinner or saint, but he does not spare her husband, who is the outstanding figure in the final tragedy.

There can hardly be two opinions about Darnley. His treachery to Riccio, who had aided his marriage with Mary, was only a degree less odious than his treatment of his wife. He carried it to the extent of playing a friendly game of tennis with him on the very eve of his crime. But while Darnley was skilful enough in deceiving his enemy, he was a mere pawn in the hands of his fellow-conspirators, who supported his claim to the crown-matrimonial in order that he might be ruled by others more powerful than himself.

The terms applied by Knox to Seigneur Davie, 'pultron and vyle knave,' more aptly fit Darnley, whose weakness and vacillation made him an easy prey to the scheming nobles and banished lords. Riccio was no coward. He disregarded the warnings given him by d'Amiot and Francisco when they urged him to leave Scotland, and he treated his adversaries with contempt. The son of a member of the Italian *noblesse*, he was a political adventurer, who followed the example of his countrymen in France, and, being by nature a coxcomb, the favour which the Queen bestowed on him turned his head. But he was loyal and faithful to his mistress in her loneliness.

Riccio was well versed in diplomacy, and, as he was a devout Catholic, his opponents claimed that he was a priest in disguise and was in receipt of a pension from the Pope. In proof of those assertions Mr. Steuart's researches in the Vatican archives have yielded no evidence. It is a pity that so little can be said regarding the secretary's musical powers. By one authority he is described as 'a man very skilful in music and poetry,' and by another as 'a great musician,' but that the songs of Scotland were in any way influenced by his Italian melodies merely rests on tradition.

There are several excellent illustrations in the volume. The portrait of Riccio, which formerly belonged to the Dukes of Argyll and is now in the possession of Lord Seaforth at Brahan Castle, is a delightful picture, and the likeness from Lord Ruthven's 'Relation' is also striking. If not particularly handsome, the unfortunate Italian was not ill-faced, as Lord Herries would have us believe. What his Scottish contemporaries said about his character and personal appearance, especially his alleged deformity, is manifestly prejudiced and can only be taken with reserve.

GEORGE A. SINCLAIR.

The Register of the Privy Seal of Scotland 245

THE REGISTER OF THE PRIVY SEAL OF SCOTLAND. Volume II. 1529-1542.
Edited by David Hay Fleming, LL.D. Pp. xxxviii, 948. 8vo.
Edinburgh : H.M. General Register House. 1922.

THE first volume of this important Scottish Record, edited by Mr. Mathew Livingstone, was issued in 1908, and only now, fourteen years later, at the close of 1922, though it bears the imprint of 1921, appears the second volume. If this rate of progress is maintained it will be long indeed before the students of history will be able to obtain the benefit of the valuable information hidden away in this public register. The former volume covered the whole of the reign of King James the Fourth and fully the first half of that of King James the Fifth, 1488-1529. The present volume covers the remaining part of the latter's reign, the last date being 8th December, 1542, the day on which Mary Queen of Scots was born and only six days before her father's death.

When failing eyesight compelled Mr. Livingstone to relinquish the work of editing this record the authorities were fortunate in securing as his successor Dr. Hay Fleming, whose scholarly accomplishments and scrupulous painstaking accuracy are everywhere known and recognised. To his abilities the present work is a further testimony. It deals with over 5000 transactions contained in Volumes VIII. to XVII. of the original record. Among its varied contents a considerable number of entries refer to the King and his domestic arrangements. James brought home his first bride from France, landing her at Leith on 19th May, 1537, and the skipper of the ship which took him there and back was named John Brown (a name reminiscent of a later attendant on royalty), and for his faithful services he received a life-long pension of £4 Scots monthly. Other entries show that his Majesty had not only his royal palaces of Holyrood, Stirling, Linlithgow and Falkland but retained dwelling-places for himself in the hands of caretakers at Montrose, Haddington and Perth. Besides a large number of other personal and domestic attendants we are told the names of his organist, his surgeon, doctor and apothecary, the master of his guest-house, his 'knokmaker' and smith, his master coalier, etc.; and the slenderness of his pecuniary resources is reflected in orders for the recall of all pensions granted during his minority and strict injunctions that the compositions payable on the issue of royal grants were not lightly to be remitted. His determination to suppress the Douglas faction appears in repeated refusals to grant remissions to persons who may have held communication with its heads; and there is the instance of a remission being granted to four persons who twenty years before had been guilty of pursuing James Betoun, the Archbishop of St. Andrews, into the Blackfriars' monastery in Blackfriars' Wynd, Edinburgh, after the 'Cleanse the Causeway' skirmish and, breaking up doors and bars, putting him in dire peril of his life.

It is indeed a lively time during the fourteen years of which this volume treats, as it brings before us instances of over 260 slaughters committed, at least eighteen cases of suicide, a goodly number of mutilations and dismemberments, and no end of thefts, of which many were by the Border reivers, and there is an allusion to the hanging of Johnnie Armstrong, of romantic lore.

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To the student of Church history the volume brings many notices of ecclesiastical appointments with numerous references to churches, abbeys and other Church establishments, and, as will be expected during the dawn of the Reformation of the Church in Scotland, there are not a few cases of 'heretics' and the treatment meted out to them. Nor will the student of economics fail to find some points of interest here, while the genealogist will simply revel in the wealth of its information. There are copious, nay perfect, indexes of persons and places, and a third index of offices is an exceedingly interesting, instructive and valuable addition.

HENRY PATON.

A HISTORY OF NORTHUMBERLAND. Vol. XI. By Kenneth H. Vickers, M.A. Pp. xii, 510. With 7 plates, 28 figures and 1 map. Demy 4to. Issued under the direction of the Northumberland County History Committee. Newcastle-on-Tyne: Andrew Reid & Co. 1922. £2 2s.

THIS splendidly produced, printed and illustrated work merits all praise, not only because of its outward form but because of the great care that has been bestowed upon its historical contents. This volume contains the Baronies of Carham, Branxton, Kirknewton, Wooler and Ford. The ecclesiastical history of each parish is excellently narrated and the pedigrees of the owners of the manors are well given.

Carham was the scene of the defeat in 1018 by the Scots of the men of Northumbria, but it remained the meeting place between the Scots and English. Wark under the Roos family had much connection with Scotland also, and Robert Roos was tutor to Margaret of England, Queen of the Scots king Alexander III., until he fell under the English king's displeasure. The Roos family lost their lands for a time through alliance (by love) with the Scots cause, and there was great litigation. Wark Castle became of great importance against the Northern enemies when in 1541 John Carr of Helton was its captain.

Moneylaws belonged before 1292 to John Wischard, a Scot from the Carse. He joined the Scots, and at last, through this, lost the lands.

Branxton was wasted by the Scots before 1381, and endured in 1523 a raid from the Laird of Wedderburn, and was the scene of the battle 'which quite erroneously has taken its name from Flodden,' and which is excellently described later in the book.

Kilham suffered from the Scots in 1521, when it was raided by the Potts, Rutherfords, Douglasses and Robsons 'with their sleuth hounds.' In Howtel in 1359 land was forfeited from Roger of Howtel's adherence to the Scots.

Coupland in 1344 was in possession of the King's yeoman John Coupland, who captured David II. of Scotland at Neville's Cross.

Millfield was raided in 1513 by Lord Home, but though they lost some 600 men, the Scots returned three years later.

Wooler belonged in the twelfth century to the Muschamps. The principal messuage fell to the Grahams who joined Bruce's cause, and so lost it eventually.

Robert Bruce, however, raided Ford in 1314. It fell later into the hands of the Carrs of Helton, who are here traced back in this volume only to 1551. One wonders if they were not originally the same family as the Kerrs on the other side of the Border, with whom they certainly became connected by marriage in the time of King James VI.

A. FRANCIS STEUART.

FASTI ECCLESIAE SCOTICANÆ. By the late Hew Scott, D.D. Revised and enlarged edition. Vol. IV.: Synods of Argyll and of Perth and Stirling. Large 8vo. Edinburgh: Oliver & Boyd. 1922.

WE note with pleasure the issue of another volume of this great work of reference. To the ecclesiastical student and those interested in Church history in Scotland this collection of biographies will be of much value; but the book has a wider interest than this, and appeals to all who care for our national history. We look forward to the early completion of the labours of the editors.

DOCTORS' COMMONS AND THE OLD COURT OF ADMIRALTY. A Short History of the Civilians in England. By William Senior, of the Middle Temple, Barrister-at-Law. Pp. viii, 115. Cr. 8vo. London: Longmans, Green & Co. 1922. 6s.

THIS is a book on a little known subject. Civil law never took root wholly in England as it was, from the time of Stephen, opposed by the customs of the realm, or common law. Still, as this book shows, it gained a place early in one Court. This was in the Court of Admiralty, where since the thirteenth century it was adopted in a cryptic way as an approach to international law. Civilian lawyers were thought important when it came to deal with 'outlandish' affairs. Henry VIII. gave them support by the suppression of the study of canon law, and employed one of them in the question of his divorce. They were used by Elizabeth in her controversies with Mary Queen of Scots.

Doctors' Commons was their last home. It was established as a semi-collegiate foundation before 1569 as 'The College of Advocates,' and was housed first in the house of the learned fourth Lord Mountjoy, though it subsequently moved to another place. They retained their hold on the testamentary and matrimonial business (a tangled web they made of it, too, as we know from *David Copperfield*) until 1857, and lost the Admiralty Courts not so very long before. Their history will be learned through this little book, which needs rather close reading as it jumps back and forward from epoch to epoch.

ISLEMEN OF BRIDE, BEING PICTURES OF NATIVE LIFE IN CERTAIN OF THE HEBRIDES DAILY THROUGHOUT THE YEAR. By M. E. M. Donaldson. Pp. 165. La. 8vo. Paisley: Alexander Gardner. 1922. 8s. 6d.

THIS fantasy of one of the Western Islands of Scotland where the islanders are Roman Catholics and simple and delightful folk will be read with

interest and pleasure. The writer takes the character of 'The Ferryman,' and so is able to enter into the lives of the islemen, to know their Celtic legends, the goodness of their priests, and above all their songs. We are told the life of Bride the 'Nursemaid of Christ' and 'the Aidwoman of Mary,' the legends of her birds, the habits of her island people, their fulling songs, all hoping in veiled words for a Jacobite recrudescence, and their great simplicity, piety and faith. The author writes from the position of a Scottish Episcopalian, which ought to interest those who do not know that point of view.

IRELAND. Edited by George Fletcher, F.G.S. Pp. xiv, 294. With maps, diagrams and illustrations. Post 8vo. Cambridge: At the University Press. 1922. 8s. 6d.

ANY book that enables us to follow the history of Ireland is welcome, as a word may explain some old and constantly recurring wrong or grievance. This book is no exception. Omitting the chapters on geology and natural products and confine ourselves to the history we still learn much. The race mixture of two races of perfectly different standards of civilisation, the struggle of language and religions alone explain part of the legacy of troubles left by the English conquerors to their descendants. There is an interesting account of the Irish 'Kings,' the bans on whom were almost equal, to *tabus*, and the custom of fosterage. It seems strange how the Christian Irish, turbulent among themselves and but lately converts, should have been able to send so many missionaries to Scotland, France, Italy and Germany, but the facts are undoubted. The book describes the old provinces and the modern shires and their formations. The chapter on language is well studied, and shows a probable origin of the Ogham alphabet.

THE EVOLUTION OF CLIMATE. By C. E. P. Brooks, 'M.Sc. With a Preface by G. C. Simpson, D.Sc., F.R.S. Pp. 173. 8vo. London: Benn Bros. 1922. 8s. 6d.

THE only parts of this book with which we are concerned are the three last chapters. One gets some interesting ideas. 'The twilight of the Gods' may represent a period of cold in early Germany, while the equable climate of Italy perhaps allowed a powerful race to develop there. Kashmir, the author says, was one of the few places less peopled in old times than now. Since 500 A.D. the climate of the world has been the subject of much discussion, but if migrations of nations are caused by the change there must have been considerable variations. The buried cities of Mexico and Yucatan were once flourishing towns, and the 'Edge of the World,' Turkestan, has become covered with sand, whereas the climate of Iceland and Greenland appears to have got colder. All this is mainly conjectural, however, like that of the 'Age of Man' dealt with in the last chapter of the book.

Kinley : Banking Policy of Chile 249

MONETARY AND BANKING POLICY OF CHILE. By Guillermo Subercaseaux, Professor of Political Economy in the University of Chile. Edited by David Kinley, President of the University of Illinois. Publications of the Carnegie Endowment for International Peace. Division of Economics and History. Pp. xii, 217. La. 8vo. Oxford: At the Clarendon Press. 1922. 7s. 6d.

THIS study of the finance policy of Chile during the World War is of interest to bankers. It begins with an historical account of the currency of the Spanish Colonial period. A mint was established by the King of Spain in 1793, and from that period the history of the Chilian currency and finance is traced down to our own time.

THE PLANTERS OF COLONIAL VIRGINIA. By Thomas J. Wertenbaker. Pp. 260. La. 8vo. Princeton: Princeton University Press. London: Oxford University Press. 1922. 10s. 6d.

THIS study shows that the settling of Colonial Virginia was by no means the chance scheme that it has been held to be, but a well thought-out plan to establish England in America and rid her of some of her surplus population. It would have done the latter more had it not been ruled by the tobacco cultivation. This led to the introduction of negro slavery, so that the importation of white labour was greatly decreased. The book gives an interesting account of the early settlers and the troubles during the Stuart period.

SPEECHES AND DOCUMENTS ON INDIAN POLICY, 1750-1921. Edited by Professor A. Berriedale Keith, D.C.L. In two volumes. Pp. xxxii, 386; vi, 364. Small 8vo. London: Oxford University Press. 1922. 2s.

A VERY useful set of documents are included in these small volumes: the first deals with the East India Company and the Government of India Act of 1858; the second down to the Indian Councils Act of 1909. The third portion is called 'The War and Responsible Government in India, 1914-21.' To the documents is added an introduction which quotes Sir Thomas Munro's words in 1824: 'if we pursue steadily the proper measures, we shall in time so far improve the character of our Indian subjects so as to enable them to govern and protect themselves.'

THE RACES OF ENGLAND AND WALES. A Survey of Recent Research. By H. J. Fleure, D.Sc. Pp. 118. With 7 illustrations. London: Benn Bros., Ltd. 1923. 5s.

THIS is a short *resumé* of anthropological study. It brings the researches of distinguished anthropologists from Canon Greenwell and Lord Abercromby together with the speculations of the later workers at the subject. It will be read with interest.

Notes and Communications

THE CASTLE OF KILDRUMMY. We are glad to see that Mr. W. Douglas Simpson, Aberdeen, is at work on a volume entitled *The Castle of Kildrummy: its place in Scottish History and Architecture*. Kildrummy is not only interesting in itself, but its relation to Bothwell Castle, and Coucy Castle, which was practically destroyed in the Great War, should add to the value of Mr. Simpson's work. We hope he will receive sufficient encouragement to secure its early publication.

FORT-WILLIAM, 1751-1752. While the farmhouse of Tombreckachie, Glenlivet, was undergoing repairs some years ago a number of papers fell from an opening in the ceiling over the second and highest floor. The paper, of which enclosed is a copy, is in a very good state of preservation. How it came to be there is a puzzle. The other papers are yellow with age, frayed and nibbled and difficult to decipher. They have reference mostly to John Stuart, Drumin, and other persons and places in this neighbourhood.

The item £1 2 1½ on page 253 seems small, but it is correctly transcribed, and accords with the summation. Perhaps the man had done some work for part maintenance.

R. H. CALDER.

Glenlivet Manse, Ballindalloch.

ACCOMPT OF SUNDRY DEBURSEMENTS BY GEORGE DOUGLAS AT FORT WILLIAM ON HIS MAJESTY'S SERVICE, 1751 and 1752.

		£	s.	d.
1751				
October.	To Expenses for Glenevis's Board &c. in my house when confin'd to the Fort by Lord Justice Clerk's Warrant, and mentain'd by me by Col ^o Craufurd's for 21 Days at 2/6 p. day - - - - -	2	12	6
	To D ^o for Cameron of Fassefarn by D ^o Warrant 4 days - - - - -	0	10	0
	To D. for James Drummond by d ^o Warrant 29 Days - - - - -	4	17	0
	To Horse hire paid by me for Transporting the last from Fort William to Dalnacardoch -	0	8	0
		<hr/> £8	7	6

1752. Expences about Donald M. Coiloig the Officer,
Viz^t

April.	...To Sheriff Officers Expences going to the Country to sum- mond Evidence to be ex- amin'd, and the said Evidence Travelling Charges, in whole Proceeding his being sent to Inverness in order for Tryal p receipt - - - - }	£4 18 0
May.	...To Expences &c Horse-hire to myself to Inverness to attend the Tryal, and to carry down Evidence from Different Parts }	3 10 0
	...To my 2 ^d Journey to Inverness to bring him to Fort William in order to his Execution - }	3 0 0
	...To Expences making & Erect- ing a substantial Gibbet for his Execution, p receipt - }	3 17 9
	...To the Executioners, Fees and Expences p d ^o - - - }	2 10 6
	...To a Sheriff Officer to Escort him, and their Travelling Expences p receipt - - }	1 10 3
		<hr/> £19 6 6
	...To Expences in apprehending Neil & Donald M ^o Hwoils alias M ^o Millens, Officers sum- mond in Persons to be Examin'd Evidence against them, and Transporting them to Inverness, in order for Tryal for Cow Steal- ing, from whence they were Banish'd to the Plantations by the Lords of Justiciary last May, in whole - - - - }	11 7 0
July.	...To sundry officers Fees & Ex- pences sending them to Different Countrys to call in persons to be examin'd as Evidence against Angus na Craig & Donald a Gun, and Travelling Expences to the Evidence coming to Fort William p receipt - - }	£2 18 6

1752. July.	...To Expences p rec ^t to Lachlan M ^c Intosh & John Lilie officers, bringing up the said Gun for Execution, & Angus na Craig with other 3 for Transportation - - -	£1 18 0	
	...To John Ross officer with Expences carrying the said Angus and others to Stirling, with shoes bought for them by him p Receipt - - -	1 16 8	
	...To my own Expences attending the Tryals of Donald Gun & Angus na Craig at Inverness for 8 Days, with Servant & Horses & Incidents to the Evidence taken with me - -	4 10 0	
	...To Expences for the Executioner & Officers attending him from Inverness, and their Expences p acco ^t and Receipt in whole - - - - -	5 9 0	
			£16 12 2
	...To Expences for Guides & Officers & Liquor sent out with parties by Col ^o Craufurd's order, with intent to apprehend John Brack Kennedy - - - - -		2 7 5
	...To a person in Rannoch for Intelligence ag ^t Seg ^t More - - - - -		0 2 0
	...To 2 Guineas given John M ^c Millen by Col. Craufurd's desire for his Trouble apprehending Duncan Roy M ^c Millen and Expences for Boats &c ^t - - - - -	£2 18 0	
	...To Officers Expences going to Sundry places in the Country to call in persons to be Examined Evidence ag ^t him with their Travelling Charges p receipt - - - - -	1 8 6	
	...To Alex ^r M ^c Millen's Expences going to Glenelig to find out Evidence ag ^t him for 3 stolen Horses found in the Country - - - - -	0 10 6	

1752.
July.

...To his Mentainance in the Guard from the 9 th March to the 2 ^d Sept ^r that he was sent to Inverara as an Evidence ag ^t James Stewart, and was then released - - - -	£1 2 1½	£5 19 1½
...To Ewan Breck M ^c Phie for coming in with Information - - - - -		0 2 0
...*To Cash advanced Alex ^r M ^c Cuil by Col ^o Craufurd's orders p receipt - - -		5 0 0
†To Expences fixing up Iron Barrs in a Barrack Window, with Irons and Bolts for the safe keeping James Stewart Confin'd in order for Execution p receipt - - - -		1 16 6
To John Cameron for Intelligence about Loch- garry by the Governor's desire - - -		2 2 0
To an Express to Edin ^r sent by the Governor		1 1 6
To D ^o one to Bernera to Cap ^t Ball - -		0 7 6
		<hr/> £74 11 2½ <hr/>

* To be remitted to you when M^cCool is paid.

† To be charged to the Board of Ordnance.

'PAROCHINE OF SCATSTA' IN SHETLAND (*S.H.R.* xx. 78).

The parish of Delting (Dala-ping), was sometimes called Scatsta (*Fasti Eccl. Scot.* III. 435), or Delting and Scatsta (*Goudie's Shetland*, 232, 240), or Olnafirth and Laxo (*ib.* 156), being the names of the two church-districts into which it was divided. The names of parishes are usually those of the townships in which the parish churches are built, or otherwise they are taken from the dedications of the churches.

The following is a list of the townships, called *scattalds*, of the parish of Delting, compiled from three MS. rentals of the years *circa* 1500, 1628 and 1717. The names are given in their consecutive order from Aithsting on the west, along the coast to Lunnasting on the south-east. These rentals give the skatt paid by all cultivated lands and the rent paid by earldom lands. After the excambion between the bishopric and earldom estates in 1614, the whole of the bishopric lands and revenues in Shetland were transferred to the earldom, in exchange for earldom lands and revenues in Orkney; so that the rentals, after 1614, include bishopric as well as earldom lands.

(1) Gonfirth (including South Voxter); (2) Be-south the Voe, in Ulnafirth (including Voe itself); (3) Be-north the Voe, in Ulnafirth; (4) Weathersta (including Busta—*Byrstad*, in 1490); (5) North Voxter (including Hardwell, mentioned in deed of 1556); (6) Scatsta; (7) Laxvoe (mentioned in deed of 1596; described in rental of 1628 as 'Be-north Yellsound, viz. Laxo,' and in c. 1500, as 'Laxo'); (8) Garth (including Garth, Caldbak, Urka, Cruikseter); (9) Yellsound (including Tofft, Nesion, Brough, Troneseter, Buranes, described in 1628 as 'Yellsound and Burraness,' and in c. 1500 as 'Nesso and Burrones'—the name 'Yellsound' does not now appear on the maps; the township lay on the southern shore of Yellsound); (10) Firth; (11) Dale (from which the *thing*, or priest's district, probably took its name; it included Isbuster, from which Alexr., mentioned in the deed of 1596, may have taken his name); (12) Colafirth (called 'Colmasater' in 1500, a name which is not given in the later rentals).

This list does not include the islands—Fishholm, Samphrey or Sandfrey, Muckle Roe, Bigga, which were bandied about from one parish to another in accordance with the shifting residence of the owner. The same shifting occurs also in Orkney, where farms of contiguous townships sometimes pass from one township to the other along with the shifting owner.

The rental of the three places—Hardwell, Scatsta and Laxo—mentioned in the deed, is as follows:

Hardwell, in North Voxter scattald, consisted of 9 marks of land, which paid the skatt of a three-pennyland; there were thus 3 marks per pennyland, as compared with the normal 4 in Orkney, and the average $3\frac{2}{3}$ in Shetland. The earldom owned one of these 9 marks of land, of which the rent was the maximum 12d. in 1500-1717; in 1717 it was feued by John Hawick. In 1575 Nichole (of) Hardwell was *lawwrightman* or custodian of weights and measures, and Andrew Gifford (later, of Wethersta) was *foud*, or bailie, of Delting and Scatsta (Goudie's *Shetland*, 240, 232). In 1760 Alexr. Dunbar, of Hardwell, married Margaret Hawick, of Scatsta (Grant's *Zetland Families*).

Scatsta scattald consisted of 72 marks of land which paid the skatt of 27 pennylands or $1\frac{1}{2}$ eyrislands; there were thus $2\frac{2}{3}$ marks per pennyland. The earldom owned 12 of these marks which paid rent at the rate of 8d. In 1717 Bruce of Muness accounted for the feu of 10 of these marks, and John Hawick for the 2 marks of Uphouse, and he paid the skatt of the whole scattald. In 1576 are mentioned Andro Gifford, underfowd, Nichole Hardwall, laurichtman, Andro Hawick of Scattsta, Thomas and Magnus of Laxvo in the parish of Delting and Scatsta (Balfour's *Oppressions*, Maitland Club, 27).

Laxo scattald consisted of 72 marks of land which paid the skatt of $10\frac{1}{4}$ pennylands; there were thus an average of $6\frac{3}{4}$ marks per pennyland. There were no earldom lands. In 1717 the skatt was paid by the following persons in accordance with the number of marks of land they held, either as owners or tenants: Lawrence Williamson, for 7 marks of land; Arthur Irvin, $23\frac{1}{4}$; John Williamson, $4\frac{1}{4}$; Robert Irvin, 6; Antony Irvin, 5;

Arthur Irvin, 4 ; [Thomas Mouat of] Garth, 3 ; Brabra Ma(thews) daughter, 5 ; Janet Hall, 4 ; Liliass Irven, 3 ; Magnus Ramsay, 7.

The whole subject of marks of land, skatt and rent has recently been reviewed in *Old-Lore Miscellany*, ix. 53.

The Orkney and Shetland *eyrisland* of 120 acres, corresponds to the *tirung* of the Hebrides and the Scottish ploughland. The *eyrislands* in Orkney and Shetland were valued at their purchase price in 1137, in Norse marks of 215.8 grammes, or 240 Norse pennyweights of pure silver. In Orkney the normal *eyrisland* was valued at 72 marks, of which the rent, $\frac{1}{4}$ th, was 3 marks (*i.e.* 10d. per mark), corresponding to the Scottish Old Extent of 3 marks, or 40s. per ploughland. In Shetland the average value of the *eyrisland* is 58 marks ; and apparently to bring them into line with the Orkney *eyrisland* or the Scottish ploughland, they arranged their marks of land into blocks of 72, each of which was called ‘ a piece of corn-tiend,’ of which each ‘ piece ’ was further subdivided into quarters of 18 marks, each of which was called a ‘ last ’ of land—the rent and tithe of a last was 36 meils at 6d., or a last weight of corn.

The original rent was 10d. Norse per mark, two-thirds of which was paid in wadmél, or homespun, at 2d. Norse per ell (18" × 36"), and the remaining third was paid in corn at 6d. per meil (72 lbs. Norse), and latterly in butter at 6d. per lispund (originally 12 lbs. Norse). By 1500 these rents were adjusted to from 4 to 12d. Norse per mark, increasing by halfpence ; but by 1700 the rents were still further adjusted to 4, 6, 7, 8, 9, 10, 12, omitting 5d. and 11d. and halfpence. The rentals prove that rents were varied all along by increase and decrease. It stands to reason that a mark of land paying 6d. of rent would be half the value of one paying 12d.

Tithe was uniformly charged at 2d. Norse per mark of land, *i.e.* one-fifth of the original rent of 10d., which again was $\frac{1}{4}$ th of the purchase price. This corresponds to the Scottish method of valuing tithe, *viz.*, the rent was assumed to be one half of the produce, so that one-fifth of the rent was equivalent to one-tenth of the produce. In Shetland all marks of land continued to pay 2d. of ‘ Shetland value ’ in tithe, irrespective of the decrease or increase of the rent ; and latterly, in addition, they had to pay vicarage tithe as well ; whereas in Scotland, one-fifth of the rent, being one-tenth of the produce, or the whole tithe, included vicarage or small tithes.

The condition attached to the pre-emption money of the wadset ‘ of our own leal won gear unborrowed ’ is in accordance with the usual condition in Norse deeds of wadset (*Orkney and Shetland Records*, Viking Society, i. 72) but was not required by Norse law.

ALFRED W. JOHNSTON.

SAINT COLUMBA. The village of Auldearn in Nairnshire is traditionally associated with St. Columba, and early in June ‘ St. Colm’s Market ’ was observed till about a generation ago.

In connection with this fair a custom survived which seems to carry some hint of an ecclesiastical usage. All the young women of the parish

appeared in white dresses, which the historian of Nairnshire suggests may be a relic of a baptismal or confirmatory rite.

The parish minister of Insh, near Kingussie, relates that at St. Columba's Fair anciently held in honour of the Saint, it was the custom for the women to appear in white, in token of having been baptized.

Are there similar traditions in other localities associated with St. Columba in Scotland or Ireland?

A. R.

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The Scottish Historical Review

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The History of British Foreign Policy

BRITISH foreign policy ¹ has often enough formed the battleground of contending parties, but till quite recent years it has never been a subject of really serious historical study, and Sir John Seeley's memorable essay on the growth of 'British Policy' stands almost alone. It is only fitting that Seeley's University should be responsible for the first attempt to fill the yawning gap. Yet even the present monumental work, of which the first volume is now under review, reflects the uncertainty of treatment which has hitherto prevailed. On the very first page the reader is led to expect an account of 'the principles more or less consistently followed in the conduct' of foreign relations; but the narrative takes far more account of the trees than of the wood, and there is no attempt, until we come to Castlereagh, at a clear statement of aims and policy, though of course many valuable indications are let fall, as it were, by the wayside. Indeed, the whole book might well be taken as a text by those who deny all continuity whatsoever to British policy: for there is no sign of anything like a continuous thread.

It may be that the authors and editors shrank from expositions and interpretations of policy which might pass as 'tendencious'; but however opportunist the general attitude of our statesmen towards the Continent may have been, it is hard to believe that a better case for consistent and positive statesmanship could not

¹ *The Cambridge History of British Foreign Policy, 1783-1919.* Edited by Sir A. W. Ward and G. P. Gooch. Vol. I. 1783-1815. Pp. xiii, 628. Large 8vo. Cambridge: University Press. 1922. 31s. 6d.

have been made out. Sir Adolphus Ward hardly touches upon the causes of British impotence under Mary, under James and Charles, and again under Charles II. He has some interesting things to say regarding the failure of Cromwell's twofold Northern Alliance, and the contradiction between his designs for a Protestant League and a French alliance; but no real attempt is made to present either Elizabethan or Cromwellian statesmanship as a living whole, still less to illustrate the contrasts between them. Both Elizabeth and Cromwell made England a power of the first magnitude in Europe, but how far was this fact the outcome of a far-reaching plan, and not in each case a mere outburst of national vitality, skilfully directed by a political 'realist' of the first order? This is the type of question which might have been profitably discussed in such a volume. It is only with William III. that it is easy to detect a clear political aim, and a constructive European policy, and one is tempted to ask whether this is not due to the fact that he was a Continental, and not an islander. As Sir Adolphus Ward brings out clearly, William perceived certain identities of interest underlying the jealousies and conflicts of the eighteenth century; and the alliance of 1689 made a final breach in the religious interest as the determinant of political friendships—England and Holland now allying with the Jesuit-ridden Habsburg Court, the Most Christian King with Hungary and the Turks.

Has British policy always been purely opportunist, concerned only to prevent the rise of any universal power such as might threaten the independence of these islands and their enterprises beyond the sea, and therefore fluctuating in its friendships from one epoch to another? Certainly the two most glaring examples of British variableness—the abandonment of the Allied cause in 1711 and again the abandonment of Frederick the Great in 1763—have led many foreign critics to answer this question in the affirmative. It is quite true that the death of Joseph I. in the one case, and the Prusso-Russian agreement in the other, had utterly transformed the European situation, and that our Allies were already out of acute danger when we left them; but this is the most that can fairly be said in extenuation: and it is difficult to understand what is meant by 'the moral results' of the War of Spanish Succession (p. 58). Still more extraordinary is the comment upon the Treaty of Utrecht: 'Continental statesmanship had been taught a lesson which it might, to its own advantage, have more readily remembered—'

that British foreign policy was not, as a matter of course, under the imperative control either of established historical tradition or of supposed commercial interests.'

In the confused history of the Quadruple Alliance there is again no visible thread—this time, perhaps, because there is no thread there, and because the policy of this island was too often deflected by specially Hanoverian and dynastic interests. The eighteenth century was the age of the grand diplomatic game in its supreme form; the conception of the Balance of Power was by no means confined to this country, but dominated Dutch, Habsburg, Spanish and even (at times and *faute de mieux*) French policy. Every power was inspired by the purest egotism, which (as so often) effectively obscured self-interest. There was as little sense for the general interests of Europe as there was for the rights of those populations which formed the subject of such constant and cynical diplomatic bargaining and reshuffling. Nothing is more characteristic of the outlook of statesmen in that age than the complicated scheming for territorial rearrangement which culminated in the partition of Poland. For a long time there was hesitation between the alternatives of Poland or of Turkey. The itch for fresh territory had to be satisfied at all costs: in which direction, was almost a minor detail.

In the case of Great Britain egotism and acquisitiveness took the form of desiring a clear field outside Europe, and therefore playing off against each other the rival continental groups in the much vaunted 'Balance of Power.' Indeed that change from Austro-French rivalry to an Austro-French alliance, which is one of the root facts of eighteenth century diplomacy, was very largely the result of British opportunism, based upon maritime and extra-European interests. We relied first upon Austria, and then no less gladly upon her deadliest enemy, as an instrument for checking France and so extending our power in Asia and America. 'Hertzberg,' Mr. Clapham writes of the period preceding the French Revolution, 'acted on the principle that Prussia's policy was to have no policy—she ought to be always adjusting her programmes to a changing world, in order to extract from it the maximum of land and of power.' This might with considerable plausibility be applied to British foreign policy throughout the greater part of the eighteenth century. Even when Pitt is under discussion, we are given no clue as to what he really thought or aimed at in foreign policy, beyond the mere opportunism of the moment—the honest desire for peace

in his first great period of financial reform, the firm resolve to prosecute the war to a successful issue in his later years.

Mr. Clapham brings out very clearly our complete failure in 1790, and again in 1792, to forecast events in France (but this has been the case in most countries and in most great upheavals), and finds one explanation in our detached and intermittent outlook. For instance, no one in Britain seems to have taken any interest in the death of Leopold II., though it was one of the most decisive events in the whole revolutionary epoch. The reports of our ambassadors, as he reminds us, 'are those of a profoundly interested audience at the great Continental play.' Ministers were 'too engrossed with parliamentary affairs to attend to events on the Continent,' and even Pitt himself 'had no knowledge either of Continental peoples or their policies.' Albert Sorel, in a passage quoted by Mr. Clapham, writes as follows:—'The English only make up their minds to fight when their interests seem absolutely threatened. But then, plunging into the struggle because they feel themselves bound to do so, they apply to it a serious and concentrated passion, an animosity the more tenacious because its motive is so self-regarding. Their history is full of alternations between an indifference which makes people think them decadent, and a rage which baffles their foes. They are seen, in turn, abandoning and dominating Europe, neglecting the greatest Continental matters and claiming to control even the smallest, turning from peace at any price to war to the death.' There is nothing so illuminating as this in the Cambridge volume, ably written as it is; but it is no discourtesy even to four such distinguished writers to say that Britain is still waiting for her Sorel.

Certain it is that none of them, save Professor Webster, ventures upon any theory of a consistent British policy. Mr. Clapham concludes his interesting chapter on 'Pitt's First Decade' by the admission that 'the postulates of British foreign policy had become uncertain'—postulates which he has not attempted to define. Even Professor Holland Rose, after contrasting the attitude of Burke and of Pitt towards revolutionary France—the one as a principle carried to its logical issue, the other as pure opportunism—frankly confesses that Great Britain's 'methods were empirical, her warfare tentative, her blunders colossal.' He brings out clearly the tortuous, secretive and unreliable diplomacy of Austria under Francis and Thugut, as a prime factor in the failure of the Second Coalition; but he has

apparently failed to detect in Pitt any constructive ideas of policy, anything beyond a spirit of high patriotic resolve. He is, of course, extremely severe on the Peace of Amiens and its sequel, but when he accuses the Government in 1807 of 'acting without any system,' he is applying a criticism which both he and Mr. Clapham had already applied to Pitt himself. Indeed, in assigning to the Duke of Wellington the chief praise for Britain's *political*, not merely her military, triumph against Napoleon, he indirectly pronounces sentence on the older statesmen and their diplomatic methods.

Professor Webster goes a good deal further, and openly declares that Britain, though the paymaster of the Coalition, lacked 'the military prestige and diplomatic ability' needed to back her 'finance and sea power.' He shows how Britain was almost entirely ignored during the decisive negotiations of 1813—how, for instance, Austria's adhesion to the Alliance was actually concealed from our envoys, until it was an accomplished fact. But henceforward British foreign policy loses, at least for a time, its hazy character, and Castlereagh soon proves to be 'the most European and least insular of all British Foreign Ministers.' He showed his farsightedness from the first by pressing for 'a common bond,' to guard against allied dissensions; and he was untiring in his mediation between Austria and Russia. It is of course notorious that he was no friend of constitutional liberties in Europe, and worked for a settlement which contained many seeds fatal for the future. (His repudiation of Bentinck's work in Sicily, his sale of Genoese independence, his attitude to Saxony, his support of Austrian domination in Italy, are sufficient proof of this.) But he at any rate worked according to principles and a definite plan, and it is this which enables present-day writers to draw so favourable a contrast between Castlereagh at Vienna and Mr. Lloyd George at Paris. Moreover, there is the further irony that it was he, even more than the erratic Tsar Alexander, who 'laid the foundations for a new experiment in international government' and thus earned the right to be regarded as a genuine forerunner of the League of Nations. The verdict of history has already been passed upon his reactionary tendencies, but this must not blind us to his great and indeed almost unique merits in certain directions. He at least knew what he wanted, and achieved much constructive work within the limits which he set himself. Professor Webster's survey of his policy, based upon judicious selections from his

papers and despatches, is much the most enlightening account of him that has yet appeared.

There are useful appendices, containing selected diplomatic documents relative to British war policy, Anglo-Austrian relations, negotiations with Sweden, etc. It is to be regretted that in the bibliography the same method has been followed as in the *Cambridge Modern History*, whose value would have been infinitely increased by judicious notes of comment on the various works cited.

R. W. SETON-WATSON.

General Council of Estates

IN the reign of James III. the student of Scottish institutions begins to find a welcome access of material. After 1466 an authentic and fairly continuous register of Parliament survives: from 1473 accounts of the Treasurer are extant: from 1478 there exists a register of Council in civil causes which can be traced back to 1469.¹ In discussing the forms under which the estates met, it was natural to start from a point at which comparative evidence was sufficient to establish a technical distinction between 'parliament' and 'general council,' and to sketch the subsequent history of that distinction until it disappeared.² The development prior to the reign of James III. is much harder to follow, and definite results are more difficult to obtain. A multitude of questions arise, bearing upon the main issue and requiring special investigation. In the present state of knowledge no more than a mere outline is possible; but an outline may serve to indicate some of the problems and to promote further inquiry.

Survey of the later practice brought into relief the publicity of the high court of Parliament, as distinguished from 'general council' and 'convention' of the estates. Publicity, repeatedly affirmed in the English *Modus tenendi parliamentum*, seems to have been associated with 'parliament' in Scotland. For the manner and extent of summons in the earlier period little evidence remains but what is incidental and indirect. Before discussing these scraps of information, it may be well to inquire, first of all, whether there were any matters in which the competence of 'parliament' was demonstrably exclusive.

Chalmers of Ormond, a Lord of Session who was an exile in France after the fall of Mary, wrote a tract for the French explaining the institutions of his native land. In the course of it he remarks that process of forfeiture against rebels in absence may be led only before the Crown and the three estates on notice

¹ Acta Dom. Conc. ii, xcvi.

² Sc. Hist. Rev. xx. 98.

of forty days. This form of assembly, he says, the Scots call 'parliament.'³ By his time, it should be observed, the supreme civil court of the Session had deprived or relieved 'parliament' of important judicial functions; and Chalmers selects this competence in forfeiture for the crime of treason as characteristic and distinctive. Additional information comes from an exposition of the legal and administrative system, prepared in 1559 for Francis and Mary. The Clerk Register and the Justice Clerk mention two forms of process in treason, one before the king and the three estates in 'parliament,' the other before the Justice General and an assize. If the accused is absent, the Justice is limited to a sentence of horning: the king and the estates in 'parliament' may proceed to a sentence of forfeiture, which 'parliament' alone can reduce.⁴ In the case of Lord Drummond, who was accused in 1515 of treasonable conduct, and who indignantly offered to clear himself in the 'parliament' then assembling, one of the lords entered his protestation that Drummond's action should be no prejudice to 'the forty days of privilege that all lords and barons ought to have by the law to answer upon treason.'⁵ This specifically establishes a connection between the parliamentary *induciae* of forty days and prosecution for *lèse-majesté*.

Evidence of antiquity is not wanting. In the time of Robert I. notice of forty days was considered requisite for 'parliament.'⁶ In the final paragraph of the Corpus Christi MS., which deals with the Scottish King's household, probably towards the close of the thirteenth century, there is a statement which implies its supreme competence and full publicity. All who claim to hold office of fee from the Crown ought to have their right tried *en plein parlement et noun pas par meindre counsail*.⁷ Formality and publicity are easily detected in the proceedings of a 'parliament' at Cambuskenneth a few months after Bannockburn. The lands of those who fell fighting on the English side, and of such as had been 'repeatedly called and lawfully awaited' to make their peace with King Robert, were declared forfeit. To this drastic act a large number of prelates and barons affixed their seals.⁸ It was described, some years later, as 'the judgment

³ *La recherche des singularitez*, f. 7.

⁴ *Discours d'Escosse* (Ban. Club), 18 ff.

⁵ *Sc. Hist. Rev.* xviii. 159-60.

⁶ *Reg. Mag. Ssg.* I. app. i, 32.

⁷ *Sc. Hist. Soc. Misc.* ii. 37: Professor Rait drew attention to this important passage.

⁸ A.P. i. 464.

given in our parliament, with consent of all the clergy and people at the demand of justice'; and it had fallen upon 'those who at the said parliament did not prove to be at our faith.'⁹ The record enumerates prelates, earls, barons, nobles, and sums up with 'the whole community of the realm.' The nature of the situation must have involved summons to all freeholders of the Crown; for it was a juncture at which Bruce had to know where he stood, and to be assured of allegiance. In 1292 Balliol was in a position somewhat similar. He had to deal with contumacy; and the defaulters were called again to do homage and hear the royal judgment on the point of their non-compearance after summons.¹⁰

The records do not furnish materials sufficient to determine the actual attendance in such cases; but expressions like 'the whole clergy and people' or 'the whole community of the realm' seem to point to full formality and publicity in citation. In the fifteenth century the royal writ to the sheriff, which preserved traces of an earlier time, charged him 'to summon or cause to be summoned publicly.'¹ In 1331, early in the reign of David II., we find him executing his office.²

If the penalty of exclusion from 'the community of the realm' on a criminal charge was the concern of 'parliament,' that supreme court had a competence in connection with the civil process known as 'falsing of dooms.' Sir Philip Hamilton-Grierson has shown how cases in this form passed upwards step by step, and from court to court, till they reached and were determined by the ultimate tribunal.³ The antiquity and prevalence of this manner of appeal in Scotland are still in some obscurity. If the process was old and well-established, it might be argued that this was one of the important factors connected with the growth of 'parliament' as the supreme court of the realm. The final decision, at all events, was of obvious importance as a declaration of law, and had an interest beyond that of the parties immediately concerned. Unfortunately we are not yet in a position to be certain. There is one instance extant, and one only, belonging to 1321, in which 'parliament' is not specified as the supreme tribunal; but the record is so doubtful and the position so inadequately explained that discussion is

⁹ *Ibid.* 481.

¹⁰ *Ibid.* 447-8.

¹ *Ibid.* 104.

² *Cal. Doc. Scot.* iii. 187.

³ *Sc. Hist. Rev.* xv. 205.

unprofitable.⁴ It seems that under David II. 'parliament' was requisite for a final verdict.⁵

Besides these two exclusive functions in criminal and civil jurisdiction, there was another which was of great importance in Scotland. It is well known that grants of taxation did not fall under the sole competence of 'parliament' until the period of the Revolution and the disappearance of 'convention of estates.' Up till that time 'parliament' was not necessarily the manner of assembly which took common counsel on supply. The absence of serious controversy between king and people on any foreign or continental policy, fear of subjection to English power, loyalty to the Crown as standing for the integrity of the nation, all contributed to this result. In 1326, when Robert I. was granted for life 'the tenth penny' from freeholders and burgesses, he promised to refrain from certain exactions; but the spirit of bargaining was not so strong as the feeling of gratitude, and the subsidy did not come from a 'parliament' of the three estates, for the prelates were not included in the agreement.⁶

It was only in an indirect way that questions of finance were associated with 'parliament'; and they arose in connection with the maintenance of the royal estate. According to the principle affirmed in 1367, 'the king can and ought to live without oppression of the people.'⁷ David II. took oath at his coronation that he would not alienate domain lands, possessions, or rents of the Crown.⁸ In order to remedy the effects of dilapidation, the practice of revoking improper grants was early in use: how early we cannot say. The first instance upon record seems to be a revocation by Robert I., probably in the 1314 'parliament' at Cambuskenneth, after Bannockburn.⁹ The ransom of David II., which was the factor most decisive in bringing the burgess representatives into the great councils of the realm, and was an insistent problem till the end of the reign, led to a vigorous overhaul of the Crown property in 1367. It was the principal business of a 'parliament' at Scone. The lands and revenues now to be recovered under the

⁴ R.M.S. i. app. i. 74: A.P. i. 479. This appeal was not from a regular justice-ayre.

⁵ *Sc. Hist. Rev.* xviii. 158: cf. R.M.S. i. pp. 557-8. In *Exchequer Rolls*, i. 284 (1330) we have *per amerciamenta W. de Fenton, militis, in quibus cecidit in parlamento pro falsacione iudicii reddit.*

⁶ A.P. i. 475.

⁷ *Ibid.* 502.

⁸ *Ibid.* 492.

⁹ *Ibid.* 682.

comprehensive act are to remain perpetually with the Crown, 'and are never to be granted . . . unless upon deliverance and assent of the three estates.' If David will reward a servant, he may do so only from moveable goods and *cum bona deliberatione consilii*.¹⁰ A revocation immediately after his release in 1357 was to forbid alienation *sine maturo consilio*¹: the revocation of 1367 specifies 'the three estates,' but does not say 'in parliament.'

At the accession of James II., alienation is subject to the advice and consent of the three estates, without indication of the form under which they are to meet;² but after the Douglas forfeiture in 1455 an important step was taken. Certain lordships were 'annexed' to the Crown, to be incapable of alienation without authority of 'parliament.'³ This act, suggested by the Canon Law,⁴ drew a distinction between property 'annexed' and property upon which the king was at liberty to dispose.⁵ The former was incorporated in the Crown by 'parliament'; and 'parliament' alone could authorise a dissolution.

When 'parliament,' technically so called, first appears, it is an assembly of the two orders of clergy and barons; and the Corpus Christi MS., as we have seen, distinguishes it from other and less authoritative councils. Its supreme competence was connected with full and public summons on the maximum *induciae* of six weeks; but the removal of Scottish records by Edward I. and their subsequent ill-fortune in English hands make it impossible to trace the growth of the distinction between what became 'parliament' and what was 'lesser council.' From the outbreak of the wars of independence investigation is complicated by the gradual appearance of a third order in the burgesses. No inquiry into the origins of 'general council of the three estates' can afford to ignore the development whereby this new element was introduced or the circumstances in which it entered.

Sufficient notice does not seem to have been taken of the year 1295, when Scotland made an alliance with France. Philip

¹⁰ *Ibid.* 501-2 : cf. 528.

¹ *Ibid.* 492. The act of revocation was passed in 'parliament,' not in the 'council' of which record survives (A.P. xii. 11 : i. 525).

² A.P. ii. 31. A royal oath of James II. speaks of 'the three estates,' but does not mention forms of assembly (Pinkerton, i. 476).

³ A.P. ii. 42.

⁴ Cf. James IV.'s oath, *ibid.* 236.

⁵ *Ibid.* 146.

the Fair called the first States-General in 1302, to strengthen his hand in the conflict with Boniface VIII.; but the towns appear to have participated in the controversy as early as 1290, and to have been represented on an embassy to the pope.⁶ In negotiating the Scottish treaty of 1295, Philip required Balliol's commissioners to promise confirmation under the seals not only of prelates and barons but of *universitates et communitates villarum*, the seals of the 'notable' burghs to suffice.⁷ Six burghs—the four which by ancient privilege constituted the judicial 'court of the burghs' under the Chamberlain, and the important commercial towns of Perth and Aberdeen—must have sent representatives to Dunfermline with their seals, to be attached to the treaty.⁸

The transaction has an interest for the history of France, in that the suggestion emanated from Philip. Its French origin is reflected clearly in the phrase *communitates villarum*, which is not Scots Latin. The most remarkable feature of the case, however, is the summons of these leading burghs to take their part in confirming an important engagement in foreign policy. We know that the Court of the Four Burghs met a few weeks *before* the treaty was sealed and *after* the terms were definitely reported in Scotland; ⁹ but we are not told whether the question was considered, or how far this curious judicial survival had come to be the nucleus of a burgh council or convention.

No express reference to attendance of burgesses at councils of the realm occurs in surviving record until 1326. Bower takes for granted that the assemblies dealing with the succession in 1315 and 1318 included them; ¹⁰ and the Book of Pluscarden treats the 1315 meeting as a 'general council' of the three estates.¹ The presence of burgesses is not impossible; but the business recorded is not of the kind with which they are likely to have been concerned.

It is usually held that the burghs made their first appearance in 'parliament' at Cambuskenneth in 1326. An indenture between King Robert on the one hand, and earls, barons, freeholders and burgesses on the other, provided for a tax in subsidy to the liberator during his life: in return he promised to abstain from some oppressive requisitions. Our knowledge of the

⁶ Glason, *Hist. du droit*, v. 412.

⁷ A.P. i. 452.

⁸ *Ibid.* 453.

⁹ *Ibid.* 724.

¹⁰ *Scotichronicon*, xii. 24 : xiii. 13 : xiv. 25.

¹ *Lib. Plusc.* ix. 13.

transaction depends entirely upon the text of the indenture; and that text comes from a 'transcript' under the great seal, given *in parlamento* at Edinburgh in the following spring.³ The 'transcript' was intended, apparently, to be the public testimony and record of an agreement which up to that point was in a measure tentative. The bargain did not include the churchmen; and the indenture itself, formulating the terms, does not claim to be a parliamentary act, but only to have been made while the king was 'holding parliament.' Burgh commissioners were undoubtedly present at Cambuskenneth, entrusted with the common seals of their respective corporations. The antecedent and subsequent steps, however, are completely hidden. Unfortunately the supposition that the parliament of the four burghs, meeting for judicial purposes, had by this time become the occasion of a more or less general convention depends upon uncertain authority.³ Were that supposition correct, it would be natural to conjecture that preliminary conversations and final acceptance took place in a burgh meeting. What seems to be certain is that the grant of the tenth penny at Cambuskenneth was not the act of 'parliament,' but the result of negotiation between the king and the temporal estate, without participation of the clergy.⁴

The Chamberlain presided in the burgh parliament. He was a link between it and councils of state. His presence may serve to explain the somewhat disconcerting fact that a 'parliament' imposed a general tax to defray payments under the treaty of Northampton and that the burghs contributed, though there is no evidence of their participation in the national assembly.⁵ Some years later, under David II., 'parliaments' at Scone and Dundee granted contributions. The *Exchequer Rolls* do not throw any light upon the situation, beyond indicating the corporate and independent character of the burgh subsidy. The temporal landholders contribute as *communitas*: the other contributors as *clerus* and *burgi*.⁶

The doubts expressed by the editor of the first volume of the *Exchequer Rolls* regarding the presence of burgesses in 'parliament' at Cambuskenneth seem to be well founded. It was long before they gained a regular and admitted place there as

³ A.P. i. 483.

³ *Ibid.* 51, 309, 703.

⁴ In 1398 the clergy claimed a right to consider subsidy before giving consent in general council or parliament (*ibid.* 574).

⁵ *Exchequer Rolls*, i. lxxxv. 113.

⁶ *Ibid.* 501.

the third estate. In 1366 the prelates, earls, barons, and freeholders of the Crown have been called 'in manner due and wont' to 'parliament': the burgesses, *ad hoc* and *ex causa*—to this particular parliament or business, and on special grounds.⁷ The clerk is still using the same formula when Robert II. has begun to reign; ⁸ and even in 1427 the *ad hoc* recurs.⁹ Evidently the assumption that burgh commissioners appeared to represent a third estate of 'parliament' under Robert I. is much too facile. It ignores the demonstrable fact of their tardy admission to a permanent footing in the supreme court of the realm; and it leaves out of account the possibility that their entry was effected not directly, but through 'general council,' in connection with urgent questions of foreign policy and finance which brooked no delay.

Prelates, temporal lords, and burgesses co-operated at Dunfermline in 1295, when they attached their seals to the treaty of alliance with France. It is not likely that the appearance of the States-General in 1302 failed to have its influence upon Scotland. Indeed, there are features in our Scottish 'council of the three estates' which suggest French analogies. The first States-General were not purely feudal assemblies dealing with feudal law: they were called for a political purpose. The towns were summoned not on any tenorial principle, but in virtue of their wealth and importance, and at the discretion of the Crown.¹⁰ When a question of feudal interest emerged, as, for instance, the succession to the throne, the third estate was reduced almost to vanishing point; ¹ and sometimes the king confined himself entirely to the advice of the clergy and the nobles.² The Crown consulted its subjects at will, and according to the circumstances of the case. There was no precise rule for the extent of summons. Inconsiderable vassals were omitted altogether; at the first meeting even sub-vassals were present.³

In view of French practice, and after the precedent of 1295, it would not be surprising if the Scottish burghs began to be called into council; but the state of our records leaves us in almost complete uncertainty as to the facts. In 1326, when

⁷ A.P. i. 498.

⁸ *Ibid.* 547.

⁹ A.P. ii. 13.

¹⁰ Glasson, *Hist. du droit*, v. 414, 439: only in 1308 were all summoned.

¹ *Ibid.* 417.

² *Ibid.* 445.

³ *Ibid.* 436-7: the Cambuskenneth indenture of 1326 includes sub-vassals.

burghesses were among those who 'convened'—the court-word 'compear' is not used—we might argue an *ad hoc* council, but not a council of the three estates. Professor Rait is no doubt justified in attaching decisive importance to the transactions in 1357 regarding the ransom of David II. from English captivity. Whatever suspicion there may be that 'general council of the three estates' had a more gradual growth than appears,⁴ there can be little hesitation in believing that the financial problem gave it fixity, and very soon affected the personnel of 'parliament.'

It is with the return of David II. in 1357 that we have the first really tangible evidence of the distinction between 'parliament' and 'council of the three estates.' On November 6, a little more than a month after his liberation, he held *consilium* at Scone with 'the three estates there present' or, to render the clerk's meaning better, 'the representatives of the three estates who were there.' The meeting is consistently described in two documents as *consilium*: in a third as *plenum consilium*.⁵ There was no time to give the parliamentary notice of forty days. Business related mainly to the urgent question of the treaty and the ransom, for it had been stipulated that confirmations of indenture should be delivered at Berwick on November 11, or at latest before November 19.⁶ These specified dates are interesting. The indentures were sealed at Berwick on October 3: 'parliament' could not be called before November 12, and even that day would involve a slight anticipation of the agreement. What happened was that a *plenum consilium* of the three estates was called for November 6. The assembly was held competent to advise confirmation; and the king ordered the great seal to be appended. Thereafter the council considered ways and means, the clergy and the burghesses bargaining for the maintenance of their privileges, and recommended a drastic act of revocation, with a renewal of the royal oath to forbear from alienation. 'Parliament' met on November 12;⁷ and improper grants were formally revoked.⁸ No record, beyond incidental reference, survives.

⁴ John of France, writing to Scotland in 1352, addresses *communitates villarum* as well as clergy and barons (A.P. xii. 8).

⁵ A.P. i. 491, 521.

⁶ *Ibid.* 521.

⁷ *Exchequer Rolls*, i. 545. The editor of vol. ii. (p. xxxvii) notices the point, but does not distinguish the 'council' and the 'parliament.'

⁸ A.P. xii. 11 : i. 524-5.

Whether November 19 was mentioned at Berwick in case the confirmation had to come before 'parliament' it is impossible to say. At all events the *plenum consilium* was considered sufficient. Like some 'general councils' and 'conventions' of a later date, it had a double character, in some matters fully competent, in others confined to preparatory deliberation. Unfortunately, we do not know if the burgesses who came to 'council' remained for 'parliament.'

During the negotiations preliminary to the treaty of Berwick, 'the three estates'—an expression which appears on record for the first time in 1357⁹—had come together repeatedly in conference. Their respective obligations and the commission to the envoys were given *in pleno consilio regni*.¹⁰ At this meeting seventeen burghs were represented: among them, it is well to note, St. Andrews, which was at the time an important, but not a royal burgh.¹

The phrase *plenum consilium*, occurring with some frequency at this stage, deserves consideration. It is used in 1341, without indication that burghs were represented, though on an occasion on which Aberdeen had its privileges confirmed;² but it is applied to three 'councils' in 1357, two arranging preliminaries for David's liberation, the third advising ratification, and all attended by burgh commissioners. The phrase ultimately gave place to *consilium generale*, which became common in the following reign. As *consilium generale* does not seem always to imply the presence of burgesses, it would be dangerous to account for *plenum consilium* on the ground of their attendance. It might be held to indicate a meeting which was parliamentary in the generality of summons but not in point of the notice given, were it not that there is fairly certain evidence of a selective practice in calling to 'council.' The safest course is to suppose that by *plenum consilium* the clerks intended to describe a council exceptionally large and public, summoned to deal with important affairs, yet lacking the full publicity, formality, and competence of *plenum parliamentum*. At the same time, as the burgesses were not yet called regularly to 'parliament,' the use of *plenum consilium* possibly indicates an assembly of a somewhat anomalous character, not unlike the States-General of France.

The insistent question of the ransom, constantly recurring and involving the burghs as contracting parties, tended to make

⁹ *Ibid.* i. 491.

¹⁰ *Ibid.* 518.

¹ *Ibid.* 517.

² *Ibid.* 513-4.

their presence indispensable even when the form of meeting was 'parliament.' They were in attendance in 1363. The alternatives were acceptance of Edward III.'s proposals or the finding of money. Yet the clerk gives them no prominence in the assembly, which is of *prelati et proceres*.³

Apart from the appearance of burgesses, this 'parliament' of 1363 is very important owing to incidental reference to formalities in summons. An embassy was to be sent to England; and the lords undertook to attend and reach a definite conclusion as soon as the ambassadors returned. In response to royal letters 'under whatever seal' they would come, 'as if they were lawfully summoned on forty days as to parliament': they would raise no objections on the ground that summons was short or informal.⁴ A few years later the phrase 'under whatever seal' is found to cover the great seal, the privy seal, and the signet.⁵ Writers upon the use of the seals have been interested mainly to trace the growth of a system of checks, whereby it was sought to prevent illicit or ill-considered grants: they have not dealt with the matter as it relates to summons. The great seal is evidently the proper authentication in case of 'parliament'; but on this occasion the lords appear to contemplate resort to the privy seal or the signet. Without further illustration, however, the passage does not determine whether one of the smaller seals was in use at this stage in summoning to councils less than 'parliament.' In England the privy seal was coming to be used so⁶: in Scotland the Secretary and the signet were ultimately associated with 'general council,' but the antecedent practice is as yet obscure.⁷

At the same time there is evidence that what was acquiring the name 'general council' had distinctive characteristics. At Perth, in 1364, David held *plenum consilium*, and sat *tanquam in suo consilio generali*.⁸ About forty persons were present, eight of them representing five burghs. In one of the documents those in attendance are described as 'a good number (*plures*) of prelates and nobles and others our faithful men.'⁹ After giving the names, the clerk adds that 'others wont to be summoned to this manner of council were called and cited

³ *Ibid.* 492: *proceres*, as Professor Rait points out, can scarcely include burgesses.

⁴ *Ibid.* 493.

⁵ *Ibid.* 509.

⁶ Baldwin, *King's Council*, 107.

⁷ Not till 1444 are the two lesser seals proved to be in the hands of separate officers (Thomson, *Records of Scotland*, 66).

⁸ A.P. i. 495, 526, 754.

⁹ *Ibid.* 526.

to the business underwritten,' which related, directly or indirectly, to negotiations with England. He implies limitation of extent and publicity in summons; and he seems to mean that the business was specified in the notices—which it certainly was not in the rigid and general terms of the parliamentary precepts. If we do not know by what writ or under what seal the meeting was called, we may at least infer that it was by some form of communication to the individuals and corporations whose presence was desired. On the other hand, 'parliament' in 1366 is public. 'Bishops, abbots, priors, earls, barons, freeholders who hold of the King in chief' have all received warning; and the publicity affects the burghs, to which the summons is general, though they are not treated as a permanent estate in 'parliament,' but are called owing to their interest in the ransom.¹⁰ Probably it was in this period that the precept issued to the sheriffs in the fifteenth century began to take shape. They were charged to summon publicly every bishop, abbot, prior, earl, baron, and freeholder, and from every burgh three or four *de sufficientioribus burgensibus sufficientem commissionem habentes*.¹ The number of burgh representatives is something of a puzzle, because our records do not show that 'three or four' ever came;² but the expression as a whole strongly suggests a predominantly financial purpose at the time when the sheriffs were first directed to call them.

'General council' was in 1364 a recognised form of assembly. 'Parliament' was slow and cumbrous, ill-suited to a crisis requiring rapid decision. The burghs had to be called into 'council,' and through 'council' made their way into 'parliament.' It is likely that the Crown had long been accustomed to summon the most influential and discreet among the prelates and barons to advise; and it would be natural to treat the burghs selectively in respect of 'council.' In 1357 the important places—Edinburgh, Perth, Aberdeen, and Dundee—are found acting for the rest.³ The practice would be facilitated by the fact that the burghs had their own machinery for conference. When the ransom question demanded their attendance in 'parliament,' the application of the general and public summons

¹⁰ *Ibid.* 498.

¹ *Ibid.* 104.

² The nearest approach was at the *plenum consilium* to undertake the ransom, when Edinburgh, Perth, and Aberdeen each sent three, the others two (*ibid.* 517).

³ *Ibid.* 515, 517.

to them also was both easy and advisable. It fixed their responsibility. Incidentally, too, it brought them to share in the judicial business of the house, and enlarged the personnel to a very considerable extent.

In 1366 we have the first evidence of general summons to the burghs for 'parliament': next year we have record of what seems to be a new departure. 'Certain persons' were 'chosen' by the three estates 'to hold parliament': the rest were allowed to return home for the harvest.⁴ This commission is about equal in numbers to the 'general council' of 1364; but the estates are represented in different proportions. It does not reveal any systematic distribution of representation or indicate that each estate nominated its men. The harvest is the only reason given for the device: there is no hint of any part played by the king's council: nothing is said of a motive in the conduct of business.

In the summer of 1368 it was reported in 'parliament' that England would not listen to terms of peace unless 'by deliverance and commission of general council.' The phrase is *generale consilium*, not the usual *consilium generale*. It covers 'parliament' and refers, apparently, to the English objection that the recent embassy was not supported by adequate authority. The whole house seems to have remained in session: it debated 'for four days and more.'⁵ As the standing truce was not to be broken by England before the autumn of 1370 and the house decided to leave things as they were, there was no diplomatic obstacle to a renewal of procedure by commission in the 'parliament' of March, 1368-9. An economic motive, *importunitas et caristia temporis*, was given for the course, which was suggested to the estates, and received their 'consent and confirmation.'⁶ How far the royal exchequer was under consideration in the matter, it is hardly possible to say.⁷ If custom laid a burden of hospitality upon the king, the advent of the burgesses would be formidable.

In 1369-70, as the clerk explains, 'it is not or has not proved to be expedient that the whole community should apply itself' to the business in hand 'or even wait upon it.' Whatever the

⁴ *Ibid.* 501.

⁵ *Ibid.* 503.

⁶ *Ibid.* 506: no burgesses are named on the commission.

⁷ In 1328 the provisor was at some expense: in 1331 there was a lavish supply for entertainment (E.R. i. 120, 375). The defective evidence of the rolls leaves the impression of diminishing royal expenditure at 'parliament.'

motives concealed in *expediens*, once again the estates give their passive assent; and, in an ordinance restricting personnel to those actually appointed, the Black Book account—fuller than the official roll and derived independently from original minutes—speaks of those chosen *per consilium et per communitates*.⁸ Individuals named by the king are on the commission, besides those mentioned in the record; but the Latin phrase just quoted cannot be interpreted to mean *per consilium communitatum*, and the initiative probably lay with the permanent council. The *electae personae*, on this view, were recommended to the house, which did no more than approve.

It is usual to detect in these commissions the origin of the Lords of the Articles; but the Articles were always in theory a committee of report. Cosmo Innes failed to distinguish clearly between committee of report and commission with power to determine.⁹ Within the body of nominees in 1369-70 there were two committees, one on judicial matters, the other on *secreta*, which were not to be discussed at the outset in the publicity of the commission. It is possible, but not illuminating, to see in the *secreta* committee an anticipation of the Articles as a preparatory expedient. The most significant fact for the present purpose is that the *whole commission* is styled by the clerk *consilium generale*.¹⁰

This application of *consilium generale* to a commission of 'parliament' is not solitary or accidental. In 1424 it occurs again in a document preserved at Durham¹; and it was deliberately repeated in 1371, when the procedure of 1369-70 was copied.² At first sight the usage appears to conflict with the technical distinction already drawn between *consilium generale* and *parliamentum*. If, however, the standing council advised the direct summoning of important representatives of the three estates to *consilium generale*, and in the case of *parliamentum* thinned the house by a process of selection and with its own assent, *consilium generale* might come to designate what was, on the one hand, an extended 'council' and, on the other, a reduced 'parliament.' Unfortunately we do not know how often, between David II. and James I., parliaments were so treated. The practice seems to have become usual, and was in vogue when James I. assumed the government.³

⁸ A.P. i. 507.

⁹ *Ibid.* 16.

¹⁰ Innes (*ibid.*) translates *consilium generale* as the whole 'parliament.'

¹ *Sc. Hist. Rev.* xviii. 162.

² A.P. i. 547.

³ A.P. ii. 3.

The reduction of 'parliament' to the more convenient proportions of a selected commission with determining power facilitated the conduct of business. There is no indication of a resort to the expedient of a preparatory committee. In 1389, for instance, the 'articles' to be submitted have been drafted by the standing council as a series of 'points' for discussion; and with regard to the first it is recommended that 'this topic ought to be broken up and treated by the three estates in distinct and specific articles.' This parliament was called to Scone, but passed or was 'continued' to Edinburgh. Though procedure by commission is not mentioned, it must have been adopted.⁴ It would seem that *consilium generale* with power of 'parliament' was not only more suitable for deliberation but was also connected with the growth of adjournment.

The records from the accession of the Stewarts until 1424 are fragmentary; but some interesting facts emerge. A surviving roll of 1388 and 1389 contains proceedings both in 'general council' and in 'parliament.'⁵ Yet, though there is no separation of record and the two forms of assembly are in respect of certain business alternative, the technical distinction is carefully observed. In 1384 the estates meet *tanquam ad consilium generale*: next year a day is named *tanquam pro consilio generali*: in 1388 Fife's conduct as guardian is to be reviewed *in pleno parlamento vel in generali consilio*: ten years later, certain prisoners are not to be set free without 'consail general or parlement': in 1393 Cockburn of Langton becomes chief usher, heritably, at *parliamenta* and *generalia concilia*.⁶

Indications of a difference in point of summons are slight. On two occasions it is stated that at a 'general council' a 'good number' (*plures*) of the prelates and temporal lords are in attendance:⁷ on a third, it is suggested that in 'parliament' magnates and men of judgment are 'most numerous' (*plurimi*).⁸ The 'parliament or general council' to consider Fife's administration is to meet before the end of each year *per sex septimanas vel per mensem*.⁹ Were it certain that the clerk meant to distinguish

⁴ A.P. i. 556-7.

⁵ *Ibid.* 300.

⁶ *Ibid.* 550, 551, 556, 573, 580.

⁷ *Ibid.* 526, 563. Under James VI. a 'convention' comprises 'a good number' (A.P. iii. 328).

⁸ A.P. i. 558.

⁹ *Ibid.* 556. Similar phrases with the preposition *per* apply to the notice given, e.g. *per quadraginta dies*.

the periods of notice and did not refer to the date of assembly, a clear difference as well as some approximation in the *induciae* would be established. 'Parliament' certainly differs from other councils in full publicity and complete judicial competence. Fife points out that it is open to anyone with a complaint and that the petitioner is entitled to have justice: in 1398 it is ordained to meet annually, that subjects may be 'servit of the law.'¹⁰

Though Bower observes the distinction between the two forms of assembly, he throws little light upon the problem. Perhaps his most important contribution is in the narrative of the siege of Coklaws in 1403.¹ The castle was to be relieved within six weeks or surrendered. Robert III. was informed, and directed the governor, Albany, to summon a council. As time did not permit the calling of *concilium generale*, Albany wrote to 'the greater and wiser prelates and magnates in the neighbourhood.' Unfortunately Bower does not make it quite clear that in the event of 'general council' notice would have gone to *majores et sapientiores prelati et magnates* in the various quarters of the country, and not to all the churchmen and barons who owed presence in 'parliament'; but his words are interpreted most naturally in that sense. The incident is an illustration of the emergencies which made 'general council' a useful and even necessary institution. It was often dangerous for the Crown to take action without assurance of public support; but by means of this assembly feeling might be tested or aroused without recourse to the cumbrous formalities of 'parliament.'

'General council' discharged functions in civil justice which may be partially explained but cannot, at present, be defined. 'Parliament' was the normal opportunity for obtaining decisions in law. The appointment of day and place at least six weeks in advance, as in the case of the justice-ayres,² gave time to procure summons. In 1341 there were more suits than could be determined while the house sat.³ In the fifteenth century, when the Session was beginning to operate and to take regular shape, many causes came before the parliamentary auditors. The process of appeal by falsing of dooms, ending in 'parliament,' was slow and tedious. There are signs that towards

¹⁰ *Ibid.* 557, 573: the ordinance indicates that 'general council' is too common as an alternative.

¹ *Scotichronicon*, xv. 15, 16. Mr. E. W. M. Balfour-Melville drew attention to the passage.

² A.P. i. 705.

³ *Ibid.* 513.

the close of the fourteenth century and at the beginning of the fifteenth there was a tendency to have recourse direct to the Crown for remedy. In devising means to cope with civil causes and complaints, James I. sought to provide for such actions as might be 'determinit befor the Kingis consal'; and facility for summons before a court definitely located and advertised was one of the advantages contemplated.⁴ In certain cases of resort to the Crown, summary procedure would be possible; but, if a hearing of parties were necessary, citation introduced questions of time and place. James appointed 'discret personis of the thre estatis' on his session. The 'Kingis consal' need not be in 'parliament'; but it was thought that each estate should be represented. In 1385 the use of 'general council' in civil justice is illustrated. A complaint required formal discussion: day and place were named *tanquam pro consilio generali*: the occasion was to be seized for other business.⁵ While there were cases held to require 'parliament,' either by usage or in the judgment of the king's legal advisers, it is plain that 'general council' might, in certain circumstances, be an adequate alternative. If it included the most influential elements to be found in 'parliament' and was called, as seems probable, some time in advance, it would facilitate citation, accelerate settlement, and fulfil a function in civil justice which was required by the comparative infrequency of 'parliament' and the lack of regular judicial sessions in council.

There is no express evidence to show upon what theoretical basis the legislative and judicial competence of 'general council' rested. The word *plures*, already noticed in connection with attendance in the fourteenth century, has been translated 'a good number.' That is the English rendering in 1583, when it turned out that the number was not considered good enough.⁶ The centre of gravity lay in the greater ecclesiastical and temporal lords: the indifference of the lesser barons, encouraged by the commission procedure, caused a marked discrepancy between the numbers of 'parliament' upon paper and the normal attendance in fact. The clergy were familiar, in capitular meetings, with the maxim that votes should be weighed as well as counted;⁷ and the call to provincial council of the church, though general in respect of the higher clergy, also exemplified the principle of selection.⁸ We cannot be certain that the *maiores et sapientiores*

⁴ A.P. ii. 11.

⁵ A.P. i. 551-3.

⁶ A.P. iii. 328.

⁷ Van Espen, *Jus. Eccl.* iv. 26.

⁸ Robertson, *Statuta*, ii. 77: i. 251.

suggested by Bower as summoned to 'general council' would constitute a majority of those usually expected in 'parliament';⁹ but there can be no doubt that prior to and during the reign of James I. there was a considerable degree of approximation between the two forms of assembly.

Two years after his return, James I. sought to enforce the obligation of personal attendance in response to summons. Prelates, earls, barons, and freeholders of the Crown must not appear by proxy, either at 'parliament' or at 'general council,' without satisfactory excuse.¹⁰ Fines were imposed with some vigour in both assemblies. Whether James expected the measure to be effective, or was merely preparing the way for a compromise, the act which followed, two years later, attempted to introduce a system of representation for the smaller barons and freeholders, and apparently contemplated the closer approximation, if not the fusion, of 'parliament' and 'general council.' The two forms of meeting are expressly mentioned: in each the 'common speaker' is to have his function; but his title is 'speaker of the parliament.'¹

There is some evidence indicating that actual fusion was intended. Between 1427 and 1429 two 'parliaments' and two 'general councils' met; and the clerk described the summons in identical terms, so as to imply that it was equally comprehensive.² It is also remarkable that in reporting a 'general council' in 1425 he twice used the term 'parliament.'³ This is the solitary instance in the records we have, with one additional case in 1436,⁴ of failure to distinguish strictly between the two forms; and both occur under James I.

A difficulty might arise on the point of notice. 'Parliament' was upon forty days; and representation of the smaller men was a compromise between their admitted obligation and their obvious disinclination to attend. 'General council,' on the other hand, was capable of summons to a shorter date. Might a parliamentary attendance be enforced upon less than the parliamentary six weeks? Did representation meet the case of 'general council'? The one surviving indication of controversy does not reveal the grounds of debate. At a 'general council'

⁹ A majority of burghs does not seem to have been called; but the most important were included.

¹⁰ A.P. ii. 9.

¹ *Ibid.* 15.

² *Ibid.* 13-17.

³ *Ibid.* 15, c. 4, c. 10.

⁴ *Ibid.* 23, c. 5.

called a few months after the act for representation, difficulties were overcome by the estates ratifying and approving the assembly *tanquam sufficienter vocatum et debite premunitum*.⁵

In 1388 and 1389, as has been noted, proceedings in both forms of meeting were recorded in a single roll.⁶ The secondary sources from which the minutes between 1424 and 1466 are derived seem to present transactions as if all were part of one register, or species of register. The 'general council' of 1456 is the last extant which can have been included in a common record.⁷ After 1466, when the original minutes of 'parliament' begin to survive, proceedings in *consilium generale* are not found there, and never again appear.⁸ From about this period we may assume the existence of three registers: (1) of 'parliament'; (2) of 'council' in affairs of state; (3) of 'council and session' in civil causes. The third is mentioned in 1457 as the *liber actorum*, from which the Clerk Register gives extract:⁹ the second is demonstrable under James IV.,¹⁰ and may be inferred during the previous reign. We cannot be certain of the facts; but the meagre evidence points to the conclusion that under James I. and up to the end of James II. or the beginning of James III., there was an approximation of 'parliament' and 'general council.'

To his act for representation of the shires James I. added a clause which led to some permanent alteration in the formalities of summons. The precept to the sheriff for 'parliament' under James IV. and James V. charged him to cite all in his district expected to compare—prelates, earls, barons, freeholders, burgesses.¹ This was a survival from the fourteenth century. James I. announced that prelates and great lords, with those barons coming to be distinguished as 'lordis of parliament and barrentis,'² should have personal summons to councils and parliaments.³ The practice would entail a multiplication of writs, and may be connected with the ascertained fact that the

⁵ *Ibid.* 16.

⁶ A.P. i. 300.

⁷ A.P. ii. 45. A *congregatio* in 1464 (*ibid.* 84) does not seem to be a meeting of the three estates.

⁸ *Sc. Hist. Rev.* xx. 99 ff.

⁹ A.P. ii. 77. For this register in 1469, see *Acta Dom. Conc.* ii. xcvi.

¹⁰ *Sc. Hist. Rev.* *ibid.* 100.

¹ A.P. i. 104: precept (1515) in Supplementary Parl. Papers (Reg. Ho.).

² Styled 'baronis barrentis' in 1431 (A.P. ii. 20; cf. 113). ³ A.P. ii. 15.

quarter-seal—peculiar to Scotland—was introduced about this time to serve as the *testimonium magni sigilli* for chancery precepts.⁴ The natural inference from the context is that 'precepts' had been in use for 'general council' as well as for 'parliament,' and that in both cases the sheriff was the medium. The Crown must have summoned individuals by letter, from time to time, for advice upon particular affairs; but there is no clear evidence, at this stage, for any technical distinction between 'letters' and 'precepts' in calling the estates.

The appearance of some degree of assimilation between the two forms of assembly is strengthened by incidental references under James II. In one case 'general council' appointed a committee of thirty-one, with powers;⁵ in another, it resorted, like 'parliament,' to *auditores ad causas*:⁶ a statute on ceremonial dress in 1455 applied to both forms of meeting.⁷ In discussing the obligations upon freeholders of regalities in the king's hands, attendance at 'parliamentis and general consallis' was specified.⁸ Suits are called and fines imposed at 'general council' in 1440;⁹ though, perhaps significantly, there is no word of fines in 1450, or of either suits or fines in 1456.¹⁰ The king presides, but without the solemn formality of the high court, where he sits *in regali habitu ac majestate pro tribunali* or, as described in 1476, 'with the crown on his head and the sceptre in his hand, in the chair of justice of parliament.'¹

One very important passage, relating to 1450, should be noticed. 'Parliament' rises at the end of January, and consents to the appointment of a 'general council' for May. Prelates, earls, lords of parliament and 'gret lordis' will be expected to attend 'eftir the precept of the kingis lettres sall cum to thaim': all the burghs are warned that they may be called. The assembly (1) shall have competence in matters 'to be tretyt in general counsall,' and (2) on certain specified business 'sall haf the fors and the effect of the parliament now beand.' The smaller barons and freeholders are omitted; but it is not clear whether selection will be carried further.² The evidence for the preceding years, poor as it is, and the express statement that the meeting shall have the competence of 'general council,' point

⁴ Thomson, *Records of Scotland*, 75.

⁶ Fraser, *Maxwells of Pollok*, i. 164: A.P. xii. 22.

⁸ *Ibid.* 36.

¹ *Ibid.* 59, 114.

⁹ *Ibid.* 32.

² *Ibid.* 38-9.

⁵ A.P. ii. 55-6.

⁷ A.P. ii. 43.

¹⁰ *Ibid.* 39, 45.

to a reduction in publicity. It is tempting, also, to see in the 'precept of the kingis lettres' a trace of the differentiation in writ which afterwards became established—'precept' for parliament, 'letter' for council. We happen to know that the royal secretary, as an officer independent of the privy seal, appears in 1444; and it was he who in later times had charge of the signet, under which 'council,' as distinct from 'parliament,' came to be summoned.³

Another development must have had its influence upon 'general council.' The sessions for civil causes, to judge by the elaborate provisions of 1456 and 1457, were becoming more regular and frequent.⁴ There was, accordingly, less need for 'general council' in one important sphere of its activity. The *liber actorum* quoted in 1457 is the forerunner of the registers of 'council and session.' Even after 1532 the Crown used the standing court of judges as a nucleus; and it is possible that the growth of the civil court had something to do with the introduction of the signet letter in calling every species of council. It is significant that the last 'general council' which can have been recorded in the register of 'parliament' almost coincides with the legislation on the 'session.' No doubt 'general council' survived. It is contemplated and used under James III.⁵ But its judicial purposes were being served; and, when it emerges again into light, it seems to have departed from its older formality and degree of publicity. Whereas in 1450 freeholders of regalities in the king's hands owe presence at 'general consallis' like the freeholders of the royalty, in 1489 an act relating to an analogous case speaks only of 'parliament.'⁶ It is impossible to illustrate or correct this conclusion without a special study of the privy council; but it is evident that, as the privy council grows in size and importance, 'general council' tends to take the form of a temporary enlargement, endowed by tradition and usage with considerable powers. It moves away from 'parliament,' and the burghs begin to be neglected in what was an assembly of the three estates.⁷

Under James I. procedure in 'parliament' by commission with powers became less frequent, though it was long retained

³ Thomson, *Records of Scotland*, 66.

⁴ A.P. ii. 46-8. The *Auchinleck Chronicle* mentions sessions at Aberdeen, Perth, and Edinburgh in 1460.

⁵ A.P. ii. 95, 97, 114: *Tr. Acc.* i. 46. ⁶ A.P. ii. 36, 221. ⁷ *Ibid.* 252.

for convenience in cases where further deliberation was required or authoritative decisions had to be taken in the near future, while it was neither necessary nor desirable to recall the whole assemblage.⁸ In proportion as members were expected to await the end of the sitting, to approve and accept the acts as finally 'pronounced,' the question of dispatch was bound to arise. A preparatory committee to consider and formulate proposals coming from the privy council, or handed in from various quarters, would be the obvious expedient. In 1467, when we first meet with the Lords of the Articles, they are nine in number, chosen in equal proportion from the three estates like the two committees for civil complaints and appeals by falsing of dooms.⁹ There is no sign of any similar device in 'general council'; and from the time of James III. the Articles are appropriate to 'parliament' alone.

R. K. HANNAY.

⁸ Cf. *Sc. Hist. Rev.* xviii. 165.

⁹ A.P. ii. 88.

Boundaries of Estates in Caithness Diocese shortly after 1222

GILBERT DE MORAVIA, said, in the *Registrum Episcopatus Moraviensis* or *Chartulary of Elgin Cathedral*, to have been the son of the Lord of Duffus and Strabrock (and, if so, probably of the second of them, William MacFrisgyn), was Archdeacon of Moray from 1204 till 1222, when he was appointed fourth Bishop of Caithness. The Diocese then included Caithness and Sutherland as they are known to us to-day, and then comprised the three old Provinces or Ridings (trithings or thirds) of Ness, Strathnavern and Sudrland, and was co-terminous with the old earldom of Thorfinn, grandson of King Malcolm II., the first Scottish Earl of Sutherland and Caithness, who ruled from 1014 to 1057. Thorfinn was its first Scottish Earl; for, though Skuli, a Norseman, had had a prior Scottish grant long before, he never reduced the earldom into possession, and on his death, shortly after, the grant failed, and with it the first attempt to regain Caithness for Scotland failed also.

Finding the diocese, formed in 1128 or 1130 and later on equipped with a High Church at Halkirk in Caithness and a like Church of St. Bar at Dornoch, wholly unorganised, Bishop Gilbert resolved to make Dornoch, then called Durnach, the seat of his Cathedral, as it was on his own lands, carved out of the original royal grant to Hugo Freskyn, and he chose a site for it immediately to the west of the old Church of St. Bar, and dedicated it to The Blessed Virgin Mary.

Churches and chapels used by the Pictish and Columban clergy were already in existence throughout his diocese, and no doubt each of them had an area, which it served, more or less roughly defined by the three preceding bishops, Andrew, John, and Adam. But Gilbert had, on coming to his Caithness diocese, to give it a Constitution, reduce it to order, and to get it endowed.

He had to delimit the parishes within it as teind-paying units, to settle with the Lords Superior the teinds payable from each,

and to allot them among the various Dignitaries of his Cathedral, Bishop, Dean, Precentor, Chancellor, Treasurer, and Archdeacon, and to provide for the Abbot of Scone, an *ex officio* Canon, and three other Canons and the local Vicars. Gilbert had also to assign teinds for the lighting and services of his Cathedral Church.

We hear enough and to spare about teinds in the time of bishops John and Adam, but we hear nothing of parishes till Gilbert's time, in whose Constitution their names first clearly emerge.

These teinds had to be granted by the Lords Superior, and assessed upon, and collected from the heritors and vassals of the diocese, and no doubt Gilbert dealt with the estate of each of the greatest of the Superior Lords in turn.

Who were these Superiors, and what were their estates, and what parishes did each comprise?

First there was William de Moravia, *dominus Sutherlandiae*, 'son and heir of Hugo' Freskyn, who had succeeded to his father's estate, but was not yet an Earl. Secondly there were the owners of a half of the old Caithness Earldom, Ragnhild and her second husband Gunni, and one of her elder sisters, either Ingibjorg or Elin. For as daughters of Eric Stagbrellir, two of these three ladies (one probably having died, and their three brothers being dead or absent) then owned, ever since Earl and Jarl Harald Ungi's death in the battle of Clairdon in 1198, the territories of the line of Earls and Jarls derived from Erlend son of Thorfinn and also the lands of the Moddan family. Thirdly, there was John, Earl of Caithness, who lived at East Thurso, and also at Brawl, near Halkirk, when Gilbert's predecessor, Bishop Adam, was in 1222 murdered there, and who was owner of the rest of the Caithness Earldom which belonged to the line of Paul son of Thorfinn, or of what was then left of that half share.

In the Sutherland or Sudrland *dominium*, which comprised eight church districts, Bishop Gilbert would have little difficulty. His nephew William no doubt helped him, and Gilbert himself had held since 1211, by sub-grant in fee for Scottish service from William's father, Hugo Freskyn, most of Dornoch and Creich parishes, the latter then including Assynt. William's Church districts would be those held as superiors and in demesne by his lineal descendants ever since his own time until a few years ago, namely, those of Lairg (then including the southern part of the modern parish of Eddrachilles up to Kylesku), part of Dornoch

and Creich, and all Rogart, Kilmalie (the modern Golspie), Clyne, Loth, and Kildonan. This left in Sutherlandshire, Durness (then including Eddrachilles north of Kylesku), which the bishop probably owned ; and, lastly, it left Farr, as the only other parish within the modern County of Sutherland, which had then been created. Farr then included the modern parishes of Tongue, Farr, and Reay, and was the old Strathnavir or Strathnavern, to which, with other lands in Caithness, Lady Johanna of Strathnaver succeeded on her marriage with Freskin de Moravia of Duffus, William's nephew, about 1245.

In 1222 this parish of Farr probably belonged to Gunni and Ragnhild as part of the lands of the Moddan and Erlend lines ; for these two families had then coalesced into one through the marriage, in 1154, of Eric Stagbrellir, son of Audhild, and himself the sole known survivor of the males of the Moddan line, with Jarl Ragnvald's only child, Ingigerd, sole survivor of the Erlend line ; and, as later on we find their lineal descendant and sequel in all their estate, Reginald Chen III., Johanna's grandson, in possession also of Halkirk parish, where Reginald resided, we may fairly conclude that Halkirk, the land of Moddan in Dale, also belonged to Gunni and Ragnhild. Further, as South Caithness was granted to Magnus II., second son of Gylcryst Earl of Angus and himself Earl of South Caithness after July 1236, probably in right of his mother, either Ingibjorg or Elin, Ragnhild's elder sister, we may also reasonably conclude that this part of the Moddan and Erlend line's estate consisted of the parishes of Latheron and Wick, to which the designation of South Caithness, as distinguished from North Caithness, which Magnus also got as the husband of Earl John's only daughter, appropriately applies. For these Royal grants generally gave or confirmed to the grantee what he was already fairly entitled to by descent, and the Sutherland Peerage Case decided that lands and territorial earldoms where the original grant was simply '*et haeredibus*' or *heredibus quibuscunque*, and did not expressly limit the succession to males, descended, in the absence of male heirs, to the next female heir, and the original Caithness earldom so descended several times. Further, where the original grant of a territorial earldom was lost, the like result obtained under the general Scottish Law of Succession.

North Caithness, the sole residue then left to Earl John of the old Sutherland and Caithness Earldom of Earl Thorfinn, would comprise the superiority of the rest of the Caithness parishes

which then existed, namely, Canisbay, Dunnet, Bower, Watten, Olig, and Thurso, and the Earl's demesne lands in them ; and Earl John and his vassals would grant the teinds of these to the Church.

The seaward boundaries of all parishes and estates would, of course, be as now ; but the inland boundaries of the estates of the various Superior Lords would coincide with some part of the inland boundaries of certain parishes. In other words, these large estates would include and surround several parishes, but no estate would transgress any then inland parish boundary save that of a parish wholly included in that estate, such as Dornoch and Kilmalie and Loth in Sutherland, and Olig and Bower in Caithness.

It is suggested, therefore, that Bishop Gilbert's old parish boundaries, like those of the oldest English Manors, probably form a guide or aid to the delimitation in or after 1222 of the estates of the largest heritors or Superior Lords then owning land in his diocese of Sutherland and Caithness, and that these heritors or teind-payers, and their estates, were then as follows :

For DORNOCH and CREICH - William *dominus Sutherlandiae* son and heir of Hugo Freskyn, as Superior, and the Bishop himself as subgrantee of part of Hugo Freskyn's estate under Hugo's grant made in 1211 long before Gilbert's election as Bishop.

For LAIRG (including the south part of Eddrachilles), RO-GART, KILMALIE (*i.e.* Golspie), CLYNE, LOTH and KILDONAN } William *dominus Sutherlandiae*.

For DURNES (including the north part of Eddrachilles) } The Bishop himself.

For FARR (then including the modern parishes of Tongue, Farr, and Reay), and then also known as Strathnaver } Gunni and Ragnhild.

FOR HALKIRK in Caithness - Gunni and Ragnhild.

<p>For South Caithness or LATHERON and WICK Parishes</p>	{	<p>Ingibjorg or Elin (who had married the then late Gylcryst Earl of Angus, d. 1204) to whose son, Magnus II., South Caithness was afterwards granted as an addition to his Earldom of Caithness.</p>
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<p>For North Caithness or CANISBAY, DUNNET, THURSO, BOWER, WATTEN, and OLRIG</p>	{	<p>John, Earl of Caithness.</p>
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The Bishop took for his own stipend the teinds of six parishes unnamed in his Constitution or Charter preserved in Dunrobin Charter room. These must have been Golspie and Loth in Sutherland, and Reay in Sutherland and Caithness, and Thurso, Wick and Latheron in Caithness, as stated in a note to *Origines Parochiales*, vol. ii. p. 601. The teinds of the rest save Durness were divided among the other Dignitaries and Canons and Vicars as more particularly stated in the Constitution at length, while the teinds of Durness were allocated by the Bishop to the lighting and incense of the Cathedral Church.

But as Gilbert had to deal first of all with all these great Lords Superior, and get the confirmation and consent of each to his assessment of teinds, he must have dealt with the heritors in each great estate separately, and his parish boundaries would indicate the boundaries of these great estates or superiorities. His ecclesiastical Constitution has thus a value quite unique as a civil, as well as an ecclesiastical, record.¹

JAMES GRAY.

¹ The authorities for the above are: *Dalrymple's Collections*, 1705; *Origines Parochiales*, vol. ii.; *The Sutherland Charters*, in Dunrobin; *The Orkneyinga Saga* and *Hakonar Saga*; *The Registrum Episcopatus Moraviensis*; *The Charter or Constitution of the Cathedral of Caithness* at Dornoch, by Bishop Gilbert de Moravia; *Two Ancient Records of the Bishopric of Caithness*, by Cosmo Innes; *Sketches of Early Scotch History*, by the same, pp. 70 to 85; *The Medieval Church in Scotland*, by the late Bishop Dowden, pp. 111-113; *The Breviarium Aberdonense* and Sir Robert Gordon's *Genealogie of the Earles of Sutherland*. See also *Sutherland and Caithness in Saga-time*, by the writer of this paper, when published.

The Office of Sheriff in Scotland¹

ITS ORIGIN AND EARLY DEVELOPMENT

THE development of the shrieval system did not keep pace with that of the Regalities. Until 1385,² when Bute and Arran were formed into one sheriffdom, no sheriffship had been established since 1326, when Argyle was erected. Regalities, on the other hand, increased in numbers until in 1747 they are found with their divisions to number 184³—the extraordinary increase of this class of privileged Barony being due in many cases to jealousy. Barons of ordinary baronies resented being placed below sheriffs. In some instances sheriffs were lords of Regalities, sometimes Bailies. In the reign of Robert II. a new order of Regality came into existence by the formation of Robert's princely and High Steward territories into Royal Bailliaries. Of these the chief were Cunningham, Carrick, Kyle, and Lauderdale; Renfrew alone was erected a sheriffdom (in 1408). Over each the king placed a bailie,⁴ whose duties were those of a viceroy on his master's estates. France had supplied the model; there since the time of Philip le Bel *Bailleries* and *Seneschaussées*⁵ were well-recognised units of administration. The latter order was also introduced to Scotland on a similar footing to that which obtained in France, where the estates of nobles which had been forfeited to the Crown because

¹ See *Scottish Historical Review*, vol. xx. pp. 129, 222.

² Cf. *Hist. MSS. Com. Hamilton MSS.* p. 21; *Ex. R.* vi.

³ See Album of Claims for Compensation under the Abolition of Heritable Jurisdictions Act [in Signet Library].

⁴ In 1434 Thomas Kennedy was bailie of the king's lands in the earldom of Carrick (*Ex. R.* iv. p. 594); in 1450 this official is styled 'King's Bailie' [*R.M.S.* No. 414].

Sir Hugh de Eglinton was, in 1366, appointed Bailie of Cunningham [*Mem. of Montgomeries*, ii. p. 6].

The Bailie of Kyle in 1434 was John Wallace [*Exch. R.* iv. p. 594].

⁵ Glançon, *Hist. du Droit de la France*, vi. p. 305.

of treason on the part of their owners were administered by a steward—often the deprived lord's steward—for behoof of the king.

This class of jurisdiction appeared in Scotland about 1440-1455 on the forfeiture of the Earldoms of Menteith, Fife and Strathern, Annandale, Ettrick Forest, Kirkcudbright.¹ All these jurisdictions continued independently of sheriffs until the abolition of all heritable jurisdictions in 1747; their Royal Bailies and Stewards were of the same order as the sheriffs in respect of attention or lack of attention to duty; they held in heritage and without guarantee of qualification or fitness for office.

The absurdity of holding such offices in heritage was evidently felt by many at the time of formation of these jurisdictions when complaints against judges were rife. These complaints are the theme of an unknown poet, whose verses are given in *Liber Pluscardensis* under the title 'Lament for Justice.' These verses may or may not have been known to the framers of the historic measure of 1455: 'That ther be na office in tyme to cum geffyn in fee and heritage, and that the offices that are gevin sene the decease of our Sovereign lorde that dede is be revokyt and adnullyt Exceptande the Wardanry of the Merche, the whilk our Sovereign lorde has gevin till his son, Alexander Erle of Merche and lorde of Ananerdail.'²

And yet, notwithstanding this peremptory statute the Parliament of 1457 passed a measure requiring heritable sheriffs who had been convicted of neglect of duty not to lose their sheriffships but merely to lose office and profits for a year and a day;³ those holding office otherwise than heritably to be dismissed.⁴ Again, in 1469, somewhat similar penalties are imposed, and a like

¹ The Burghs of Kirkcudbright and Wigtown were on the Douglas forfeiture converted from burghs of Regality to Royal Burghs, their fermes being transferred from the lord of Regality to the Crown (*Ex. R. vi. cxi.*).

The Castles of Dumbarton, Inverness, Stirling, Urquhart, and the Palace of Linlithgow were also placed under constables appointed by the Crown.

A.P. ii. pp. 66-67; Ex. R. vi. lxxvii, lxxxiv, et seq.

² *A.P. ii. p. 43.*

³ In that very year the heritable Sheriff of Cromarty—William Urchard—obtained Remission under the Great Seal for his "depredations" on the land of the earldom of Sutherland in the company of the late Earl of Ross, and for all robberies, thefts, homicides, burnings and crimes whatsoever committed by him' (*Cal. Charters*, vol. ii. in H.M. Register House).

⁴ *A.P. ii. p. 50.*

discrimination between the heritable and the non-heritable sheriff is made in the Act depriving the convicted heritable sheriff of office for three years and the non-heritable for all time—the latter was evidently a holder *ad vitam aut culpam*.⁵

The Act of 1455, conspicuous in many respects, referred to by later legislators—and particularly by those enacting a similar measure in 1567, is an instance like so many other statutes, a model or an exemplar or a counsel of perfection and nothing more. Had the 1455 or the 1567 Act against negligent sheriffs been strictly enforced much of the subsequent legislation affecting the sheriffships would have been unnecessary.

That these Acts against judicial offices being disposed in heritage were not enforced one can understand; the heritable nature of the offices was deeply rooted; the sheriffs and lords of Regalities—the *Magnates* of the realm—were in power in Parliament. Only when some of these had proved traitor or rebel were their lands and jurisdictions forfeited.

It would be a mistake, however, to regard every sheriffship as having always been heritable. An examination of the Rolls of Sheriffs of the twelfth and thirteenth centuries shows almost all as non-heritable sheriffs. Forfar,¹ Scone² till merged in Perth; Perth³ till 1260; Edinburgh and Fife, were of this class. The heritable nature of other sheriffships is made clear for the first time about A.D. 1260. Several sheriffships begin to assume the heritable character towards the close of the fourteenth century.

The sheriffship of Dumbarton, an important frontier of the Highlands, was in 1321 granted with an express reservation by the king to have it returned to the Crown whenever demanded,

⁵ *A.P.* ii. p. 94.

¹ *Forfar* Sheriffs: David de Hay, 1211-'19 (*Reg. de Aberb.* p. 43); Hugh de Cambron, 1219-1226 (*Ibid.* pp. 162, 263); Thomas Malherb, 1226-1239 (*Ibid.* pp. 163, 262); Sir William Auchterhouse (*Ibid.* p. 200); William Comyn (*Ibid.* pp. 5, 93, 262); William de Montealto, 1263 (*Ex. R.* i. 26); John de Felton (*Ex. R.* i. p. 21); Sir Matthew de le Chene, 1277 (*Douglas*, bk. iii. p. 6); Sir David de Betoun, 1290 (*Ex. R.* i. 49).

² *Scone* Sheriffs: Maldouenus (or Malothen), 1130- (*Reg. de Dunferm.* No. 29); Ewayn, 1150-64 (*Reg. Prior. St. Andr.* p. 132); Makbeth, 1189-'99 or later (*Reg. de Aberb.* p. 27); William Blund, -1228 (*Ibid.* p. 237).

³ *Perth* Sheriffs: Wm. Kyneth, 1163- (*Lib. de Scon.* p. 8); Wm. de Hay (de Errol) [*Reg. de Aberb.* p. 12]; John de Moray, 1214- (*Ibid.* p. 148); John de Hay, 1220-26 (*Ibid.* pp. 120 and 163; *Reg. de Moray.* No. 29); Wm. Blund, 1228 and *circa* 1255; David de Lochore, 1255 (*Reg. de Dunf.* 51); Gilb. de Hay, 1263 (*Ex. R.* i.).

subject to payment of 50,000 merks annually until it was restored to the family.⁴

The fifteenth century sheriffships were not always to be held in heritage. William Abernethy, for example, who (1452) got that of Banff, held it *durante voluntate regis*; ⁵ Sir John Ross held his (Linlithgow) ⁶ for life.⁷

Even where a sheriffship had been gifted in heritage the right of disposal was jealously maintained by the king. There are several instances of a holder who, having transferred his sheriffship to another, without first craving the consent of the king, found his disposition made null and void by the king in his displeasure granting the office to one of his own choice. Thus the Countess of Mar, heritable sheriff of Roxburgh, granted in 1405 a deed of transfer of her sheriffship to Archibald Douglas; but the king, on learning of this transfer, reduced the deed in favour of David Fleming of Biggar.⁸ Apart from the king's displeasure, there was always the important element of money. While the king appeared to confer an office in heritage, it was not altogether a free gift, but one for which the recipient had to pay a specific sum or "Composition." The Exchequer Rolls detail many of the 'Compositions' received for such grants.

The death of a heritable sheriff entailed upon his nearest lawful heir the purchase of a brieve from Chancery. This brieve addressed to a baron as 'Sheriff in that part' required him to hold an inquest as the first step in the process towards the heir's obtaining sasine of the office. If the heir was a *minor*, a sheriff was appointed to act ⁹ for him 'in ward,' an exception to this rule being made in favour of minors whose fathers had fallen fighting 'under the King's banner.'¹ In the fulfilment of his ministerial duties the sheriff, having no fixed salary from the Crown, except what he derived from court escheats ² and the land

⁴ *Lennax Book*, vol. ii. pp. 20-22.

⁵ *R.M.S.* ii. 680.

⁶ In 1451 the office was in the gift of the Queen (*R.M.S.* No. 462; *A.P.* ii. p. 60).

⁷ *Ibid.* No. 1112.

⁸ *Hist. MSS. Com. 7th Rep.* 727.

⁹ A brieve which had been served before the Sheriff of Lanark in 1491 was reduced because that official was not of 'perfect age' and had not arrived at years of discretion [*Acta Dom. Conc.* p. 195].

¹ *Hist. MSS. Com. 7th Rep.* 731.

² From James VI.'s reign onwards the sheriff did not, as in former years, give a return to the Royal Exchequer of the revenues received from fines of his court. These were fixed at a stated sum and appeared in the Exchequer accounts as the Sheriff's 'Book.' In Purves' *Revenue of the Scottish Crown* (1681) the values of these

attached to the office,² made revenue wherever possible by exaction of dues from subjects requiring his services. What he derived from those paying Ward, Relief, Marriage, Non Entry, and other taxes one cannot ascertain ;³ he was by the so-called Laws of Malcolm MacKenneth, entitled to £10 of the escheats,⁴ and from 1491 to 12d. from each £1 of debt recovered by distraint,⁵ 4d. for each Act or copy of letters made [the statutory allowance provided by an Act in 1503].⁶ From the Fairs he was entitled to the best ox or unriden horse ; and from 1456 to the 'pick' of the merchandise of all doing business there—to be restored, however, to the owner at the court of the Fair if he left with a 'clean sheet,' that is, with no crime against him.⁷

books of all the sheriffdoms are detailed. The highest—£40—is given against the book of the sheriff of Berwickshire ; next in value—£30—were the books of the sheriffs of Elginshire, Aberdeen, Dumfriesshire, Fife, Peeblesshire, Wigtownshire, Forfar, Ayr, Renfrew, Perth ; the stewards of Strathearn and Kirkcudbright, the bailies of Carrick and Cunningham. £20 was paid by the sheriffs of Ross and Inverness, Lanarkshire, Dumbartonshire, Linlithgow, Edinburgh, Haddington, Kincardine. The sheriffs of Selkirkshire, Roxburghshire, Clackmannan paid annually £10 for their books ; as did the sheriffs of Bute, Banff, Nairn, Sutherland, Caithness, the steward of Annandale, the bailies of Kyle—steward and sheriff of Bathgate. The sheriff of Cromarty was debited in £6 for his book. The sheriff of Stirling, with as large a sheriffdom as that of Clackmannan, paid a trifle of £2 as his equivalent for fines, a sum which suggests that the lieges there were more orderly than their neighbours elsewhere ; or that more leniency had been the practice of the sheriff of Stirling towards defaulters. The sheriff of Argyll's book is omitted. Sheriffs, stewards, royal bailies also were responsible for payment of the blench duties (Purves, p. 34).

What appears to have been an extraordinary position for a sheriff is revealed in the petition by the Sheriff of Perth to the Convent of Dunfermline in 1255 for a grant of 4 merks from certain of their lands in consequence of the lack of escheats of court (*Reg. de Dunf.* 51, 52, 54, 108, 118).

² *Hist. MSS. Com. Hamilton MSS.* p. 23.

³ That the sheriffs did charge is evident from an Act passed in 1597. There the sheriffs are stated to have been wont to force the subjects to 'pay in ane maner ane new taxation to thame for ingathering of the same alleging it to pertain to thame as Sheriffs' (*A.P.* iv. p. 145).

In 1491 the widow of a sheriff obtained decree from the Lords Auditors for payment of the unlaw due to her husband in a case decided by him (*Acts of Lords Aud.* i. p. 148).

⁴ *A.P.* i. p. 710. [The clerk's fee was 2s. for 'ilk unlaw.']

⁵ *Ibid.* ii. pp. 225-6.

⁶ *A.P.* ii. pp. 242, 250.

⁷ Even there the sheriff did not observe the rules of the realm. In 1469 an Act was passed prohibiting, under penalty of loss of office for a year, the 'gret extortions' of the king's free lieges by the sheriffs, bailies and constables in taking what 'thai call thair dewties and feis' . . . from burdens borne in men's hands or on their back' (*A.P.* ii. p. 95 ; *A.P.* ii. p. 46).

The most famous of his 'conveyancing' fees was the 'sasine ox' which everyone receiving infestment of lands was bound to give to the sheriff. The statutory authority for that, if ever there was one, is not known; but the practice continued from the fifteenth century. The sheriff's fee, for example, on giving sasine in 1633 to Lady Doune was fifty merks 'in lieu of the old casualty of sasine ox.'⁸ Vassals of small pieces of land paid £5 in place of the sasine ox.⁹ Vassals of small Kirk-lands were, from 1690, exempted from payment.¹⁰

Among its innovations the fifteenth century has to its credit the origination of a type of official which still survives, the '*sheriff in that part*.' His function is the accomplishment of a specific duty for which the regular sheriff might not be available; such commissioners were constituted sheriffs *ad hoc*, 'Sheriffs *in hac parte*.'¹ The first record which I have found of these appointments is of the year 1422.² There the full designation—long ago dropped—is 'Bailie specially deputed in that behalf,' altered in entries in the records to 'Sheriffs specially deputed in that behalf,' and soon after to 'Sheriffs in that part.'

Much of the legislation of the second half of the fifteenth century is directed against the sheriff. To check his delinquencies fresh measures are passed. With complaints of spoliation—a common subject of litigation—the sheriff had power to deal, though the repetition of the Act of 1438 in 1449 and 1457—points to neglect of his duty towards complainers. By the last-named Act the Lords of Session were to inquire into all spoliations committed between January 1, 1449, and January 1, 1458, after which the sheriff would be the judge appropriate to such complaints, the Lords of Session having the right to try cases of spoliation of moveable goods. Where the matter was one of fee and heritage the Lords of Session were to call the sheriff to make restitution of the ground to the complainer without prejudice to either party in the dispute. An inquest by

⁸ *Hist. MSS. Com. Home MSS.* p. 109.

⁹ *A.P.* v. p. 610.

¹⁰ *A.P.* ix. p. 200.

¹ Testimonial of sasine of lands of Little Carcarey, dated 24th May, 1479. There Henry Fotheringham was appointed 'Sheriff Depute of Forfar *in hac parte*' for the purpose of infesting a vassal in certain lands. For 'more security and witnessing of the sasine' he received a 'sesing ox gray hornyt, and quhyt chekit' (*Hist. MSS. Com. 7th Rep.* 720.) Gilbert Carutheris, Sheriff of Dumfrece, specially appointed in that part by the king, 1484 (*Hist. MSS. Com. Annandale MSS.* p. 58).

² *Cal. Charters*, H.M. Register House, No. 256.

the sheriff to ascertain the last lawful possessor was followed by retour to the king of the finding.

Complaints of spoliation of tacks and mailings, actions of obligations, contracts and 'all manner of debts and other civil actions affecting neither fee nor heritage,' could be heard by lords or by sheriff.

The delegation to the sheriff of cases relating to fee and heritage was not apparently a success, for the sheriff's jurisdiction in such cases was gone in the early days of the Court of Session.³

The Act establishing the Court of the Lords of Session of 1457 has an important place both in the history of the sheriffs and in that of the College of Justice. It was a measure improved by later statutes, all tending towards the institution of the Supreme Court in 1532. Ambulatory, the Lords of Session under the 1457 Act gave notice—three months ahead—of their intended visit to a particular sheriffdom; upon receipt of which notice the sheriff was to make due proclamation of the time of Session, and of the necessity for all intending litigants to take out their summonses with forty days' warning, the defenders to such actions to lodge their answers within fifteen days.

There was no appeal from the Lords' decisions to king or Parliament.⁴

By litigants the Lords of Session appear to have been preferred to the sheriffs; ⁵ in 1474 the flow of law suits to the higher court had to be checked by statute¹ enjoining that all complaints be heard in the first instance by sheriffs or other 'Ordinaries,' a measure repeated in 1487 with an exception in favour of Kirkmen, Widows, Orphans, Pupils, Foreigners, and of actions against or by 'Ordinaries.'² This statute Parliament revoked in the following session by permitting 'all parties in tyme to cum to raise and pursue Summonds before our Sovereign Lord

³ *Discours Particulier d'Escosse*, p. 12; David Chambers's *Histoire Abregée [de l'Estat d'Escosse]*, p. 8].

⁴ *A.P.* ii. p. 48.

⁵ Many of the complaints brought to the Court of the Lords of Council and Session are directed against sheriffs; the grounds of complaint being generally: neglect of duty, partiality, irregular procedure (Cf. *Acta Dem. Conc.*; *Acts of Lords Auditors—passim*).

¹ . . . that all personis that hes complayntis persew to thair judge ordinar and wex not our Sovereign lorde nor his Consale with na complayntis bot gif it be on officiaris that will not do justice nor minister in their office efter the forme of law (*A.P.* ii. p. 107).

² *A.P.* ii. p. 177.

and his Consale,' a fact which shows how unsatisfactory were all the attempts to improve justice.³

In 1503 Parliament tried to remove some of the gross evils of the average sheriff, viz. ; the too prevalent issue of an unjust award,⁴ the undue delay of a law-suit, the withholding of a process for a bribe—enacting for the last-named that 4d. only for each process was to be charged.⁵

The sheriffs were clearly being found inadequate for the service of justice. Several of the abuses and defects lamented by the poet of *Liber Pluscardensis*, legislature had redressed or had attempted to redress, the last item of the kind during the fifteenth century being the famous ' Education Act ' of 1496, by which Act the sheriffs in office were in due course to be succeeded by a more enlightened body ; for the statute of 1496 required barons to send their eldest sons to a grammar school where they would remain until they had ' perfect ' Latin and then to a school for Law for a three years' curriculum.⁶

What the result of this measure was it is impossible to learn. Doubtless it was no more successful in its results than were so many of the other enactments. We know that the heritable sheriff of Bute in 1549 could not write,⁷ a defect due perhaps to that sheriff having exceeded in 1496 the ' age ' limit ; more probably because the Act had never been enforced. The illiterate sheriff of Bute may have been typical of the whole race of sixteenth century sheriffs.⁸ It is nevertheless to the early sixteenth century that (with the exception of a few reports of thirteenth century inquests)⁹ we owe the earliest extant official

³ *A.P.* ii. p. 183.

⁴ See case of Steward of Kirkcudbright, 1513 (*Transcript of Justice Eyre Records*, iii. 207).

⁵ *A.P.* ii. p. 250.

⁶ *A.P.* ii. p. 238.

⁷ Notarial instrument in *Hist. MSS. Com. Hamilton MSS.* p. 24.

⁸ If not illiterate, Patrick Agnew, Sheriff of Wigtown, was at least a violent law breaker. In 1510 he failed to ' compeir ' before the Justice Eyre of Kirkcudbright to meet a charge of homicide that had been made against him. For that his two cautioners, John Gordon of Lochinvar and Kentigern Murray, forfeited their security money (£100), and the defaulting sheriff was declared ' at the horn ' (*Transcripts of Records of Justice Eyres*, vol. iii. 128, in H.M. Register House).

⁹ The Report of the Barony Court of Longforgrund held in 1385, with its details of procedure (*Hist. MSS. Com. 3rd Rep.* 410) ; and the few reports of fifteenth-sixteenth century cases found in church cartularies must also be excepted.

[Reports of cases decided on appeal from the sheriff's court during the second half of the fifteenth century are preserved in *Acta Dominorum Concilii* and in the *Acts of the Lords Auditors*.]

Records of the Sheriff Courts. Imperfect as they are they reflect light upon their methods and upon the nature of actions brought before the courts. The sheriff clerk having called the 'suits,' *i.e.* the names of those owing suit or suit and presence in the court, and having noted the absentees for payment of fine, the jury was formed, the court 'lauchfully affermit' and the business of the diet proceeded with, but these early records are disappointing; they do not show the arguments of prolocutors, but briefly state the orders of the sheriff. Cognitions, Loosing of Arrestments—Bloodwyts and Spulzies are the ordinary classes of action brought to court. There are one or two picturesque touches in the dispensation of justice—as when the sheriff on direction of the Lords of Session gives relaxation from process of Horning by tender of the wand of peace.¹

The sheriffs had lost their ancient wide scope of judicial work; the Court of Session had taken from them all cases relating to heritage, and all actions presenting difficulties or intricacy; but sheriffs had jurisdiction in actions relating to Removing of Tenants.²

Appeals from the sheriff to the Lords of Session though not permitted unless by way of Advocation³ or where gross injustice, or where the sheriff having acted *ultra vires* was alleged, were numerous.⁴ In the criminal domain the sheriff's powers were likewise abbreviated; he had to forgo the right of sitting upon cases involving the Four Pleas of the Crown, which, till 1587, the justiciar had passed on to the sheriff.⁵ Cases of homicide were appropriate to his court if heard within three days of the commission of the crime. If that period elapsed before trial the case had to be sent to the justiciar.⁶ The character of the sheriff

¹ Transcript of *Records of Justice Eyres*, vol. 2, No. 354; and Balfour's *Practicks*, p. 511, where mention is made of the Steward Dep. of Fife giving wand of peace to a claimant for law of Clan Macduff.

Wand and book were symbols of a sheriff's investiture. A parallel to the sheriff's bestowal of the *virgam pacis* is found in the ceremony in the Parliament of 1542 of the restoration to power of the Earl of Angus. As a symbol of grace the earl was handed sceptre and baton (*A.P.* ii. p. 419^a).

² 1555, *A.P.* ii. p. 494.

³ *Discours Particulier d'Escosse*, p. 11; MS. of 1605, edited by J. D. Mackie, *Scot. Hist. Rev.* 1922, p. 69.

⁴ *Mor. Dict. of Decisions*.

⁵ *A.P.* iii. p. 459.

⁶ David Chambers, an ex-lord of Session, published in 1579, during his exile in Paris, an *Histoire Abbregée de tous les Roys de France, Angleterre et Escosse*. Concerning sheriffs he wrote: En chacune province d'Escosse il y a un siege royal

seems to have been no better than that of the average sheriff of the preceding century. Henryson's Fable of 'The Dog, the Scheip and the Wolf,' though chiefly aimed at the church court, was also directed against the sheriff.

‘This Wolf I liken to ane Schiref stout,
Quilk byis any forfait at the Kingis' hand.’

The much coveted post of sheriff was, in spite of contrary Acts, sought after by competitors, frequently in most acrimonious fashion.

The Earl of Rothes and Walter Lindsay were rival claimants for the sheriffship of Fife in 1565-6. The earl maintained that his right was derived from Queen Mary, who had granted the sheriffship for 'eight score year or thereby.' Walter Lindsay, on the other hand, appears to have had good reason for thinking the office his by heritage. This sheriffship, which had been in the gift of the queen of the reigning sovereign in 1451,¹ was settled upon the earl for a term of nineteen years.²

Perhaps it was to remove such anomalies that Parliament in the following year (1567) decided to convert, whenever available, heritable sheriffships into appointments *ad vitam aut culpam*, but the Act was not always kept in sight. Here is the statute: 'Item, seeing that perfect and sure judgment proceeds of

dict *vicomté* pour ministrer justice, et tels juges dictz vicontes ont tel pouvoir, comme les presidens et pro consuls avoient entre les Romains, ou les baillifs et Seneschaux en France. Sans speciale commission les crimes de lese maieste, meurtre, rapt des vierges et l'action pour le dommage de feu volontairement allumé sont toujours entendus estre reservées à la presence Royale pour estre vuides, dictz en Ecossois, *the pointes reservet to the croune*, en Francois les pointes reservez a la couronne. Les causes de homicide, larcin fraichement faicts et tous proces civils, hormis les actions dictes en Ecossois *of heritages*, en Francois de choses immeubles, appartiennent a la cognoissance de ces vicomtes; lesquels ayants haute justice, moyenne, et basse, donnent sentence aux crimes sans appel; et aux civiles cognoissent en la première instance; et iceux vicomtes ont tous quasi leurs offices pour eus et leurs heritiers (David Chambers, *Histoire abrégée*, part containing 'De l'Estat d'Escosse,' p. 8).

An instance of a sheriff having tried a man accused of theft some considerable time after its alleged commission occurred in 1643. In the complainer's petition it is stated: 'Neither has it ever been heard . . . that the principal sheriff, far less a depute, could sit upon the life and estate of the subject without commission from the Council where the partie is not apprehended reid-hand' (*R.P.C.* 2nd ser. vii. 350).

Until 1605 one day was the limit of time permitted to the sheriff for dealing with those charged with manslaughter (*MS. of 1605, Scot. Hist. Rev.* 1922, pp. 271-2).

¹ *Reg. Mag. Sig.* (1424-1513) No. 462.

² *Hist. MSS. Com.* 4th Rep. 501.

experience and knowledge they to whom the charge and authority thereof is committed ought to be experimentit and wise so that the people submittit under the judgment craving justice at their hands be not hurt neither throw delay in ministering thereof nor yet suffer any detriment or scaith throw lack of knowledge in them that minister. Therefore it is thought needful that the office of Sheriffship, Stewartry, Crownership, Baillieries, Admiraltie, Chalmerlainrie, Constabularie, Justiciarie, and other office of judgment in this realme pertaining to any person heritably whenever the same shall happene to pertain to our sovereign lord and his successors on their forfaiture or otherwise the same never to be disponit heritably frathynefurth.³ And yet sheriffships continued to be granted in heritage to favoured subjects,⁴ and not only sheriffships but Regalities⁵ (powerful rivals to the sheriffships).

During the remaining part of the sixteenth and the first half of the seventeenth century the question of cutting off the heritable sheriffships is interwoven with the legislation designed to lessen the evils of the sheriffs that were.

The reign of James VI. and I. modified the jurisdiction of the sheriff. A check was placed upon corrupt sheriffs by Justices of the Peace,⁶ who had power to revise and amend obviously bad sentences passed by the sheriffs and to report cases of 'Collusion with Delinquents' to his Majesty's Council—a striking commentary on the average sheriff of that period (*circa* 1617).⁷ The Justice Eyres (except in Edinburgh) likewise negligent, had by 1587, fallen into desuetude. An Act was

³ *A.P.* iv. p. 39.

⁴ Cf. *Reg. Mag. Sig.* (1546-80).

⁵ The growth of Regalities was in great measure due to jealousy felt by one baron towards a neighbouring sheriff or steward. Moray of Abercairney (*circa* 1473), irritated at his subjection to the Steward of Strathern—Drummond of Cargill—applied for and obtained from James III. a fresh erection of his lands as a Barony, with exemption from the steward's jurisdiction—though in this case right of regality does not appear (*Hist. MSS. Com.* 3rd Rep. p. 418).

⁶ The Act of 1617 was re-enacted in 1661 (*A.P.* vii. p. 306).

A curious parallel to the Justices of the Peace acting as a check upon sheriffs is found in England where they first emerge in 1195. In 1264 a 'Custos Pacis' was assigned in each shire to conserve the peace and possibly to watch, possibly to supersede, the sheriff, but with instructions not to interfere with his functions so as to diminish the revenue' (Stubbs' *Const. Hist.* ii. 296).

According to Sir George Mackenzie the 'jurisdiction of the Justices of the Peace was very much decayed'; but between 1707 and 1723 became 'revived and exercised with great vigour' (*Inst.* 6th edn. p. 31).

⁷ *A.P.* iv. p. 536.

passed in that year for furthering criminal justice 'over all the realm' requiring those summoned as part of Assizes to be present under a penalty of £10 for absence,¹ a fine increased in 1593 to 100 merks.²

The sheriff-depute had also come under the searchlight of the Supreme Judicature. Parliament had at various times ordained sheriffs to have deutes: the Act of 1540 required these to be gude and wise substantius men of best fame and knowlege understanding and experience and least suspect who, if continued in office more than a year, were to be sworn for the administration of justice at the Head Courts after Michaelmas.³ Sheriffs-Principal after appointing their deutes had to send them on entering office to the Lords of Session for examination of their fitness.⁴

The relation of the sheriff to Parliament⁵ in the sixteenth and seventeenth centuries is peculiar. Apart from the fact that sheriffs frequently sat in Parliament in virtue of their status as barons, they had the duty of summoning there all those in their respective jurisdictions who owed suit. From the reign of Robert I. until 1585 they appear to have performed this function—probably by their deutes. In that year, however, they were relieved of the office—whether because of neglect or of partiality one cannot ascertain. In their stead a baron from each shire was selected to receive the precept from the King's Chancery authorising him to choose from the sheriffdom 'twa wisemen being King's freeholders and weill esteemit';⁶ that Act was repeated in 1587,⁷ but cannot have been observed long as the old order was reverted to by 1595.⁸

The influence of the sheriffs as election 'agents' was realised by Charles I., who, in 1627 and in 1629, on the eve of elections, ordered his council to deal with the sheriffs and such others 'whose power may procure most voices' in order that well-affected persons may be elected.⁹ The sheriff of Roxburghshire is commanded to convene the electors to tell them of the royal

¹ *A.P.* iii. pp. 458-9.

² *A.P.* iv. p. 18.

³ *A.P.* ii. p. 358.

⁴ *A.P.* iii. p. 457.

⁵ During the occupation of Scotland by Edward I. the son of the Earl of Angus was summoned to appear for an assault on the Sheriff of Edinburgh, Hugh de Louthier—'the King's servant in Parliament at Berwick' (*Cal. Docs. of Scot.* ii. 830).

⁶ *A.P.* iii. p. 422.

⁷ *A.P.* iii. p. 509.

⁸ *Abdn. Sheriff Ct. Rec.* i. 372.

⁹ *Earl of Stirling's Reg. of Royal Letters*, i. 341, 203, 209.

'plessure and direction' to elect certain named men 'recommended by His Majesty.' The sheriffs had been restored to political power.

One curious fact regarding the sheriff in Parliament is that the sheriff of Perth or of Edinburgh or of Linlithgow—wherever the Parliament chanced to be held—was frequently present as an 'Officer of Parliament'—his primary duty there being apparently Caller of the Roll and, perhaps, exactor of fines levied on absentees and latecomers.⁴

The Rolls of Parliament of the sixteenth century do not always include him; and the strange protest made in the Parliament of 1584 by the Earl of Bothwell, Sheriff of Edinburgh, to 'have his place in Parliament and room to sit as did his predecessors, with vote and other honours,'⁵ leaves one in doubt upon the nature of the vote, whether it was in virtue of his office as sheriff—or otherwise.

Cromwell's Commissioners utilised the sheriffs in the several elections by requiring them to publish the writs of Summons to Parliament and to make known the day of the election, returning to Chancery the names of those elected.¹

Sheriffs seem to have been suspected of making false returns, for an Act was passed ordering sheriffs convicted of such an offence to pay a fine of 2000 merks.²

The right of the sheriff of Edinburgh to be present in the Parliament House during Parliament was called in question in 1685, and conceded—from which one infers that ancient precedent had not been regularly maintained by the sheriffs or their deputies of Edinburgh. The last recorded entry of the sheriff in the Scots Parliament is of the year 1693. Thenceforth his functions were confined to his Court³ and the Mercat Cross, where he saw to the due proclamation of elections and the return of the candidates to Parliament.

In their other ministerial and their judicial duties the sheriffs were flagrantly culpable. Neglect of duty—in the collection

⁴ In its early days Parliament appears to have been ambulatory, having no fixed *locus*. The sheriff's duties naturally arose from the fact of his being the chief executive officer of the place.

⁵ *A.P.* iii. p. 290.

¹ *A.P.* vi. (ii.) p. 812*b*.

² *Ibid.* p. 813.

³ The interference of the Sheriff of Wigtown in an election of 1700 by acting as president of a meeting of barons in the face of a protest made by a freeholder nullified the result of that election (*A.P.* x. pp. 203, 206, 220, 225).

of the royal dues,⁴ in exacting 'unlaws,' in permitting rebels to remain at large, was punished by James VI. and I. and his Council. Charged under these heads the sheriffs and their deutes of Edinburgh, Peebles, Roxburgh and Selkirk were in 1600 dismissed from office.⁵ Their plea was that their 'undutiful discharge of the office' was due to lack of power and force to execute the office by the non-concurrence of the people of the sheriffdom. This plea led to the king's summons to all sheriffs to appear at his next 'Convention' for the purpose of advising upon the likeliest remedy of this condition.

The remedy was not so easy a matter to discover. In 1613 James renewed his attack upon the evils, and, on the surrender to him of the sheriffship of Edinburgh by the Duke of Lennox the Council asked his Majesty to advise 'how the said offices may be servit in alltyme coming to his Majesty's contentment and the weill of his subjects.' James appointed three sheriffs, one to each of the territories—Edinburgh, Haddington, Linlithgow—where hitherto only one had been; and directed his Council: 'Because divers and great abuses haif bene committit in most of all the hereditary jurisdictions it is our pleasour that ye maturlie consult and advise upon the best and fittest means how the same may be reformit and befor the admission of these new intrants to their office that ye particularlie informe them of the same.'⁶ Among the many entries concerning bad sheriffs it is pleasant to note eulogies to the good sheriffs—few though they were. One, of the year 1613, is in favour of Sir William Seton who, on demitting (after eighteen years' service) the office of sheriff of Haddington, was complimented by the secret Council in having 'verie faithfullie, dewtifullie and carefullie, with good respect, credite and repute, always and without offenses, scandal or

⁴ An Act of 1597 recites that 'because His Majesty has been defrauded of a great part of his taxation by reason that the Sheriffs who should be ingatherers of said taxation and have that power and authority, have neglected to collect the full amount; and in other cases have oppressed the lieges by overcharging, therefore prohibit them from taking taxation and other dues (except 40/- from each £1 land)—a collector being instead appointed' (*A.P.* iv. p. 145).

The Privy Council has numerous entries of sheriffs 'put to the horn' for failure to account for their dues. For that the sheriffs were not always blameworthy. In asking the Privy Council to relieve him of the sheriffship of Elgin in 1637 on account of old age, James Dunbar of Brigs deplored his 'great losses incurred in transporting prisoners and uplifting His Majesty's annuities and other services' (*R.P.C.* 2nd ser. vi. 498).

⁵ *R.P.C.* vi. p. 69.

⁶ *R.P.C.* x. pp. 20-21.

reproach, behavit himself in the said office and (having) done unto the Kingis Majestie and his subjectis good and acceptable service thairin, theirfoir exoners him thereof.¹

It was immediately after, viz.—in 1614—that James introduced as part of his reform an annual appointment of sheriffs.² For many years he had directed his attention to hereditary sheriffships and their evils. In this respect James is an intermediate link between the legislators of 1455 and those of 1746–7. His opinions, expressed in *Basilikon Doron*, Book 2, p. 163 (written in 1599) were obviously fortified some years later by an academic debate on the subject, of which James was an auditor. The circumstances of this discussion were these :

In July 1617 James had paid a visit to Edinburgh University, and in characteristic manner summoned the Regents to his residence at Stirling Castle in order that he might hear them discuss in the 'learned tongue' matters of more or less moment. The first subject on the list was : 'That sheriffs and other inferior magistrates ought not to be hereditary.' The king listened eagerly to the arguments for and against, and turning to the Marquis of Hamilton, then heritable sheriff of Lanark, remarked, 'You see, James, your cause is lost, and all that can be said for it distinctly answered and refuted.'³

This discussion doubtless had its effect upon the subsequent policy of James, for a Commission was appointed that very year to consider and report upon the subject.⁴ By royal decree in 1620 certain sheriffships were made non-heritable.

¹ *R.P.C.* x. 30.

² *R.P.C.* x. 215.

³ *The Muse's Welcome*, 1618 edn. p. 226. 'The Muse's Welcome to the High and Mightie Kinge James,' a compilation of John Anderson, Professor of Philosophy, records the discussion, but not the King's remark to the Marquis. Dalziel's authority for the story I have not succeeded in tracing; cf. Dalziel, *Hist. of Edn. Univ.* vol. 2, p. 69.

⁴ Our Sovereign Lord continuing in that purpose and resolution bred in his royal heart in his young years for making of offices of judicatory in this Kingdom as they are in all well-governed states Employments for men furnished with gifts suitable to the dignity and gravity of the places whereby many abuses may be taken away quill is in hereditary offices of that kind can be avoyded, the rights thereof falling oftymes to women, to children or to men who neither can discharge the place nor mak chois of sufficient deputtis . . . And his Majesty unwilling to take said offices from the present possessours who and their predecessors had brukit the samen money years as their inheritance without guid and competent satisfaction. Grants power and commission to the Archbishop of St. Andrews, the Bishop of Brechin, the Earl of Montrose, Lord Binning, Lord Scone . . . to travel and deal with the haill heretable sheriffs, stewarts and bailies anent the surrender of said offices (*A.P.* iv. p. 549).

James was consistent in his efforts to improve the personnel of the sheriffship. When he learned that the heritable sheriffship of Elgin had in 1619 been disposed by the heritable holder to 'one David Kinloch, merchant and burghess of Edinburgh,' he cancelled the transaction for the reason that Kinloch was 'a person altogether unfit and incapable of such a charge and burden, conscious to himself of his own weakness and insufficient to discharge the same.'⁷

The same policy was begun by his successor, though sometimes, for lack of cash, it had to be departed from. By 1627 sheriffs 'are ordinarily appointed for one year.'⁸ These appointments were often renewed, sometimes (as in Charles's reign) because the sheriffs had not settled their accounts,⁹ and sometimes where the holder appeared to be highly suitable. Kinloch's coveted post had been given to Simon Fraser, Lord Lovat,¹ whose tenure was assured only by annual, biennial and triennial grants.

In accordance with James' Decree of 1620 converting certain heritable sheriffships to non-heritable ones, the sheriffships of Aberdeen and Inverness were, in 1629, resigned by their respective holders, the Marquis of Huntly and Lord Gordon;² and the sheriffship of Lanark by the Marquis of Hamilton.³ Pressure had been put upon Sir Wm. Douglas to resign his heritable sheriffship of Roxburgh, but it was quickly withdrawn on the counterclaim: 'Pay me first my compensation money' (£20,000). The family of Douglas was thus left with their heritage until the final dissolution of heritable jurisdictions in 1747,⁴ when the debt was admitted and £2000 paid.⁵

Those elected had, from James' reign, to appear before the Privy Council and take an oath to discharge the duties (*de fidei administratione*). If prevented by illness or other cause from attending this ceremony they were visited by a Commission, appointed for the purpose, before whom the oath was given.⁶

Right on, until Charles's great troubles directed his attention to his Parliament, the greatest care appears to have been taken

⁷ R.P.C. xiii. 186.

⁸ R.P.C. 2nd ser. vol. 2, 117.

⁹ R.P.C. 2nd ser. viii. 17.

¹ R.P.C. vols. 12, 13, 2nd ser. ii. 238.

² R.P.C. 2nd ser. 317-319.

³ R.P.C. 2nd ser. iii. pp. 864-6.

⁴ Hist. MSS. Com. 7th Rep. p. 727.

⁵ Acts of Sed. Ilay Campbell's ed. and 'Album of Claims,' in Signet Library.

⁶ R.P.C. 2nd ser. vi. 523.

in the proper selection of the Scots sheriffs. In 1635 the Privy Council, 'being careful that the subjects shall not be prejudiced of the due course of the law and justice pending the receipt of Report as to who shall be Sheriffs, Stewarts, and Bailies of those places of which the nomination is in the King's hand,' ordained those then in office to continue until discharged in the Council.⁷

The close scrutiny of the Roll of Sheriffs, which was the practice in Charles's earlier rule, was altogether neglected from 1635 onward. In place of annual appointments he reverted to the ancient custom of gifting sheriffships in heritage. The Laird of Lag, sheriff of Dumfries, had to make way in 1637 for the Earl of Dumfries and his heirs.⁸ The Dunbars of Westfield, whose tenure of the sheriffship of Elgin and Forres had been terminated (apparently) in 1637, were then reinstated in their heritable capacity.⁹ An exception to Charles's practice was the enforced surrender of the sheriffship of Stirling in 1637 by the Earl of Mar for a sum of £8000,¹ that office being then conferred upon James, Earl of Callander, *for life*.² The Earl of Dalhousie received in 1644 the Edinburgh sheriffship *ad vitam*³—all in direct opposition to the earlier principle.⁴ The Parliament of 1649 with a view to removing all sheriffs—heritable and liferent—(appointed since 1641) who were not of the Covenant Party, passed an Act giving the sheriffships of Edinburgh, Dumfries, Stirling, Haddington, Berwick, Sutherland, Perth, Lanark, Aberdeen, Forfar, Ayr, Caithness, Banff, Fife, Inverness, Ross, for one year to supporters of the Royal Cause.⁵

Cromwell's intruded Government made but a transient change in the shrieval system.⁶ Sheriffs who refused to take the oath

⁷ *R.P.C.* 2nd ser. vol. vi. p. 111.

⁸ *R.M.S.* 1634-51, No. 1123.

⁹ *R.M.S.* 1637, No. 789.

¹ *Hist. MSS. Com. Mar & Kellie MSS.* p. 195.

² *R.M.S.* No. 1700.

³ *R.M.S.* 1634-51, No. 1719.

⁴ In 1642 Charles, on receipt of a letter from the Privy Council intimating suspension of a sheriff depute of Lanark, forbade the appointment of any sheriff depute for life; and ordered all existing appointments held for life to be recalled (*R.P.C.* 2nd ser. vii. 333).

⁵ *A.P.* vi. (ii.) p. 316.

⁶ In one respect Cromwell's sheriffs were far in advance of the sheriffs before and after them. That was in banishing notorious persons 'beyond the Isle of Britane,' instead of the usual practice of transferring them to a neighbouring sheriffdom (Cf. Littlejohn's *Sheriff Court Records of Abdn.* iii. p. 160). There was, on the other hand, a more limited scope for Cromwellian sheriffs in civil actions; causes relating to personal and real estate were not in their domain (*A.P.* vi. (ii.) p. 787, s(1) and (2)).

prescribed by the English Commissioners were removed in favour of their supporters. To each sheriffdom two sheriffs were appointed, one a Scot, the other an army officer.² The Commissioners' scheme (a reasonable one) to make of Inverness and Argyle five sheriffdoms was frustrated by the powerful influence of the Earl of Argyle.³

With the Restoration the swing back of the pendulum is seen—Charles II. granting sheriffships, some for life,⁴ some in heritage, without the slightest regard for the Acts of 1455, 1567, and the decree and practices of his royal grandfather. There seems to have been no attempt made to improve the judicial organisation of the shrieval system. The holding of a sheriffship was no disqualification for appointment as a Judge of the Court of Session. Sir John Scougall of Whytkirk was both sheriff of Kincardine and a lord of Council and Session in 1665.⁵ Among the holders of heritable jurisdictions who claimed and was awarded £500 compensation in 1747 for loss of office was David Erskine of Dun, Constable of Montrose and Lord of Session. The jurisdiction of the sheriff in criminal cases included murder if the murderers were caught red-hand or immediately after the crime, and dealt with within three 'suns'; in cases of theft—if the thief were taken with the 'fang' upon citation,⁶ and Bloodwyts, in which the procedure was by an Assize, with 'the Procurator Fiscal in place of His Majestie's Advocate.' If the accused confessed the Sheriff could impose an 'unlaw' of £50, but where there was 'contumacious refusal to swear,' the unlaw

² *Mercurius Politicus*, April 15-22, 1652 (Scot. Hist. Soc.), vol. 40, p. 164.

³ *A.P.* vi. (ii.) p. 759.

⁴ The Earl of Lauderdale in 1660 was appointed Sheriff of Haddington *for life* (*R.M.S.* No. 21). The Duke of Hamilton was, also in 1660, appointed to the Sheriffship of Lanark for life (*Ibid.* No. 14); and the Earl of Moray to the Sheriffship of Inverness (*Ibid.* No. 19); and the Earl of Seaforth to Ross for life (*Ibid.* No. 235).

For grants of sheriffships in heritage, see *R.M.S.* 1660-1668, Nos. 281, 441, 957, 1047.

⁵ *R.M.S.* 1660-68, No. 808.

⁶ Petty thefts were punished by the sheriff, but serious cases were in the province of the justices. A case of theft of 'a wedder and ewe' and reset of a stolen cow—on which conviction had followed—was reported to the Privy Council by the Sheriff of Stirling for advice upon sentence. The Lords ordained Sheriff to sentence the thief to banishment of the kingdom (*R.P.C.* 2nd ser. vii. 16).

could not exceed £10.⁸ Recourse to the latter system must have been the popular rule with 'knowing' ruffians, but Mackenzie, who corrected his statement in the sixth edition of his *Institutes*, probably meant £10 was the unlaw in both cases. In civil causes his jurisdiction (actions involving payment of money up to £7 2s. 4d.), included Removing,⁹ but not actions concerning heritage. He was generally held in suspicion by Government and litigant alike; the complaint made by an accused against the sheriff depute of Stirling in 1643,¹⁰ of violent prejudice and of acting beyond his jurisdiction, finds numerous echoes in the second half of the same century. The Earl of Seaforth (a Mackenzie) used his office of sheriff of Ross (to which he was promoted in 1662)¹ to oppress his tribal enemies of the name of Ross;² and elsewhere hard fighting was tried to decide possession of a sheriffship.³ Credit is due to Charles II. and the Legislature of 1662 in trying to effect order out of the sheriffs by Acts (1) for punishing sheriffs convicted of acquitting guilty delinquents,⁴ and (2) by requiring sheriffs to make every effort to suppress thefts and robberies,⁵ and for the attempt to improve sheriff and other courts (by the appointment of a Commission in 1669⁶ to examine the forms of procedure, prices of writs, the fees and dues and the fixing of orders and rules deemed necessary for effective administration and the relief of subjects from

⁸ Sir G. Mackenzie, *Laws and Customs of Scotland*, 1678 edn. p. 415.

Mackenzie's statement is altered in his *Instit.* 6th edn. p. 28: 'I have altered £50 in the former editions to £10, the usual fine for contumacy.'

⁹ From a MS. (circa 1605) in the British Museum, edited by J. D. Mackie (*Scot. Hist. Review*, 1922), an English scribe describes the Scottish sheriff and other inferior courts. 'The Sheriff and his Depute are Judges before whom any party within the shire may be convened and pursued for removing from lands, for spoiling of goods, for violent objection of another and intruding himself in possession; and for payment of sums of money or such like matters. There is no appellation from this judicatory to the Session but upon the parties' complaint and trial of partiality of Sheriff or of Depute or upon charge of affinity between the Sheriff and the plaintiff.' In which event, the writer added, letters of Advocation are obtained which stay execution of the Sheriff's decree until the Lords decide.'

¹⁰ This Sheriff was complained of in having tried an alleged thief who was not 'apprehended reid-hand.' 'Neither has it evir beene heard . . . that the principal Sheriff, far less a deput, could sitt upon the life and estate of the subject without a commission from the council' (*R.P.C.* 2nd ser. vii. 350).

¹ *R.M.S.* 1660-'68, No. 235.

² *R.P.C.* 3rd ser. vol. 2, 19.

³ E.g. in Caithness.

⁴ *A.P.* vii. p. 307.

⁵ *A.P.* vii. p. 383.

⁶ There seems to have been no report issued by that Commission.

illegal exactions and from oppression).¹ Nevertheless the chief concern of that king and of his successor was not an earnest endeavour to raise the standard of the sheriff but the maintenance by the sheriff of the royal prerogative in the matter of religious worship. Failure to enforce the penalties attached to attendance at field conventicles meant punishment for the sheriff; the collection of the royal dues from a variety of imports—a duty that, whether performed negligently or fraudulently, caused trouble to many a sheriff.

And yet in spite of the arrest of the sheriff's progress the seventeenth century is remarkable for many advances in law and legal institutions. An eminent authority has commented upon the importance of some of these, viz. 'The great Statutes of Prescription; the completion of our unrivalled system of Registers; the new Constitution of the Justiciary Court on its present footing, a great step in the progress of freedom; the law of Entail; new regulations for the conduct of Business in the Court of Session; the settlement of the law of Tithes; Rules for Division of Commonities and Runrig lands; Bankruptcy Law; Process of Ranking and Sale.'²

The reign of William and Mary was not altogether favourable for a revision of the Scottish shrieval system. The Government could not perhaps avoid continuing (as it did in 1689) the heritable sheriffship of Wigtown in favour of Sir Andrew Agnew, who had been ousted in 1682 (on his refusal to subscribe to the Test Act) by Claverhouse.³

Nor could one expect that either the reign of Queen Anne or that of George I. would produce improvement. Indeed the position of the sheriffs was safeguarded by the Act of Security which, while decreeing the surrender—on the death of Queen Anne—of all commissions held by officers of state, specially exempted sheriffs and stewards.⁴ Feeling ran too high in Scotland to allow of any interference with its national courts and judges.

Though the abolition of the old order by the Crown's resumption of all sheriffships and other jurisdictions had been advocated by several persons of note prior to 1745,⁵ it is doubtful

¹ *A.P.* vii. p. 661.

² Lord Pres. Inglis, *Address to the Juridical Soc. on Hist. Study of Law.*

³ *R.P.C.* 3rd ser. vii. 306; *A.P.* ix. p. 65.

⁴ 1704, *A.P.* xi. pp. 136-7.

⁵ *Parl. Debates*, 1747, vol. 3, p. 16.

whether anything less than the 'Rising of the 'Forty-Five' could have brought about a reconstitution of the Scottish sheriffships. The Act of 20 George II., cap. 43,¹ was a larger, fuller, more comprehensive, and decidedly a much more effective measure than either of its predecessors of 1455 and 1567. With it disappeared for ever the heritable sheriffs, the life-tenure sheriffs, the Lords of Regalities, the Bailies of Regalities, and the heritable stewards. The *Vicomte d'Epée* gave place to the *Vicomte de Robe*, the qualified advocate of the Scottish Bar.

The Act finally closed the six-century old career of the earlier sheriffs—a period which at the end found the sheriffs, bailies of Regalities and stewards possessing less judicial authority than that wielded by their predecessors of the thirteenth to fifteenth centuries; but on the other hand it was a period during which the sheriff's ministerial duties had enormously increased.

The early sheriffs, with the burden of so many offices, were not Admirable Crichtons nor always conscientious officials in the discharge of their duties. Frequently convicted, and more frequently suspect, of partiality, corruption and of violent oppression; and of falsifying or neglecting their dues to the King's Exchequer, there has to be placed to their credit a long record of distinguished service to the king.

Many of the early sheriffs had efficiently carried out their primary duties as king's representatives in the maintenance of the royal castles and in the supervision and leading of the men of the sheriffdom when occasions for war arose. Not a few had fallen in action.

¹ The Act of 1747 was not passed without strong opposition both in the House of Commons and in the House of Lords. In the light of history the speeches for and against the retention of private jurisdictions make interesting reading, the most lucid, most logical, and perfectly convincing being that of the Lord Chancellor Hardwick, who, in obtaining from the Lord President of the Court of Session the information available upon the several tenures of the holders, and the opinions of the Judges of the Court of Session upon the best means of improving the administration of law in these inferior courts, exposed the fallacy of the Scottish Judiciary in their reasons for retaining the sheriffs, stewards, bailies and barons on their ancient basis.

The Lord President Forbes reported that actions for sums of money under 130 merks (£7 2s. 4d.) lay in the sheriffs' and other inferior courts; his suggestion that the infliction of the death penalty might be taken from the lower courts elicited the fact that very few instances of this power could be found among the sheriffs and barons in the exercise of their duties. The inviolability of Art. 20 of the Treaty of Union, which was urged in the debates, was not insisted upon. The supporters of the old order urged upon 'due satisfaction' for the withdrawal of the offices.

For such sheriffs, accustomed to the sword, seldom looking on parchment except to affix their seals, the difficulties in the accountant branch of their office must have been unsurmountable, but for their deposes, or to be exact, the deposes of the deposes.

These active subordinates, ill-paid, and often unpaid, and if not obtuse often dishonest and oppressive, kept down the standard of justice in the courts, while their ineptitude gradually led to the curtailment of the sheriff's jurisdiction in civil and in criminal matters.

Nevertheless, it was not the inadequacy of the deposes but the menace of a judge who was at once chief political minister of his province, military leader, and legal administrator—who held office in heritage and who was to these in his territory a king. It was that that finally caused the departure from the ancient territorial system. The Act 20 George II., cap. 43, was the culmination of the early sheriff's development and of the rival Regality baron. Thenceforward began the career of the modern sheriff, whose present position as judge and ministerial officer of his sheriffdom has been reached by a long series of subsequent statutes.

And, though eight hundred odd years separate the sheriff of to-day from the earliest sheriff north of Tweed, he is a continuation of that long, unbroken line of sheriffs, performing many of the duties of the early holders. The sheriff has his clerk; the former serjeant or mair is now the sheriff officer. From the office of the ancient coroner (Crownor) there has evolved that of the procurator-fiscal; the 'forspeakers' or 'prolocutors' are advocates or solicitors. The assize or jury still does duty but not quite on mediaeval lines. The dempster alone is missing.

Without enumerating the almost countless functions of the present day sheriff one is reminded of his association with his ancient predecessors in his processions to the Mercat Cross whenever Royal Proclamations have to be made, and in his duties as Returning Officer in Parliamentary elections.

By virtue of this continuity of service the early sheriff is represented by his successor of the present time, who thus represents the most ancient officer in the Scottish Judiciary.

C. A. MALCOLM.

Two Valued Contributors

JOHN MAITLAND THOMSON, LL.D.

THE death of John Maitland Thomson, which occurred in March, leaves a blank which, in far more than the mere conventional sense, will not be easily filled. He was indeed *sui generis*, and nature, after his making, broke the mould. His career, judged by worldly success, was not remarkable. Born in 1848, the son of the laird of Balgowan in Perthshire, he went in due course to Harrow, where his merits as a student were soon recognised, though I cannot conceive his ever distinguishing himself in the playing fields. A legend—if it was a legend—illustrative of the extraordinary power of a meticulous memory, long remained, that he knew the abstruse pages of Bradshaw's Railway Guide by heart, and could tell the time of starting and the stoppages of any given train. Be that as it may, he was brought into contact, both at Harrow and Trinity College, Cambridge, to which he subsequently went, with some of the ablest minds of the day. Perhaps he and the still happily surviving Lord Dunedin were two of the most brilliant intellects of that time both at school and college, and Thomson did not take the lower place.

When the time came to choose a career he was admitted to the Scottish Bar in 1873 ; but the mere forensic strife of a practising advocate was utterly unsuited to a mind like his. What he really did in these early days of professional idleness will never be known, but we may be sure that his time was not wasted. The wide range of his learning shows that he must have studied many subjects, and his wonderful memory enabled him to retain the details of many things which one would naturally have supposed to be known only to an expert in a particular branch. He was a profound mathematician, an able classicist, and it is not too much to say that no department of literature was unknown to him. It is related that the late Mr. Bullen stated that he believed there was only one man who knew as much about the

Elizabethan poets as he himself did—if he did not know more—and that was a man probably unknown to his correspondent, Maitland Thomson of Edinburgh. The present writer recollects a conversation with him about the various editions of the English Bible, in which he showed an intimacy of knowledge which would have done credit to a professional librarian.

For long he showed no marked bias for any particular subject, but about 1880 he was asked to assist in editing the *Register of the Great Seal*, then in course of publication. Before long he became sole editor, and he was responsible for all the issues after volume iii. down to volume ix. ; after its issue other duties claimed his attention. The volumes are a monument to his painstaking accuracy, and even the elaborate indices were compiled by his own hand.

On the retirement of Thomas Dickson, the Curator of the Historical Department in H.M. Register House, Thomson was felt to be the only man fit to succeed him, and he soon showed that he was not the least eminent of the distinguished Scottish archivists who have done so much to bring to light the historical treasures of their country—men like Thomas Thomson, Joseph Robertson, Cosmo Innes, and his own immediate predecessor Dickson. He made indeed his office a very living force ; shy, retiring and modest though he was, he was accessible to all, and his learning and knowledge were freely at the disposal of everybody who wished to make use of them. He spared no trouble, and the unravelling of some complicated issue in an obscure genealogy was as much joy to him as the discovery of some new historical fact.

He was moreover the kindest of men ; he voluntarily resigned his position as Curator in order that his assistant, who had been appointed comparatively late in life, might succeed him, and so earn a better pension than he would otherwise have done. But this was eminently characteristic of the man ; selfishness had no part in his composition ; he was always ready to spend and be spent on behalf of others.

In 1911 he was Rhind Lecturer in Archaeology, and gave a series of lectures on the Records of Scotland. These he was induced with difficulty to publish only last year, and the volume is quite indispensable to students of Scottish history. It will not be found in the book, but some of us who heard the lectures may remember a delightful bit of quaint humour which illumined one of the early passages. After speaking of the various kinds

of records, he added hastily and shyly, as a sort of aside, 'and there are some which are made only to be broken.'

Honours he did not seek ; rather, studiously avoided. But the University of Edinburgh conferred on him the degree of LL.D. a good many years ago, and with this he was much gratified.

With the exception of the Rhind Lectures and some contributions to this *Review*, he left no record of expository work behind him. But his influence will always be felt in the work of others to whom he willingly imparted his stores of information. Amongst those who would most cordially have acknowledged such help were Bishop Dowden and Sir Archibald Lawrie ; their friends will always remember with gratitude Thomson's devotion in dealing with the large amount of uncompleted manuscript material which they each left at their death. It was due to Thomson's devoted care that these manuscripts were made available for scholars. Personally, few who had the privilege of his acquaintance will forget his patience, kindness and sympathetic interest in their inquiries ; and they will always remember that slight De Quincey-like figure timidly tripping along the street, oblivious of everything except his own thoughts, and the necessity of putting his feet down on the joinings of the paving stones.

Had Thomson possessed a physique in proportion to his mental powers, and a somewhat different temperament, there is no saying to what heights of eminence he might have risen. As it is, he was *facile princeps* in his own limited sphere, and he will always be had in remembrance as one of our greatest Scottish archivists.

JAMES BALFOUR PAUL.

THE REV. CANON JAMES WILSON, Litt.D.

By the death of the Rev. Canon James Wilson, B.D., which took place at Dalston, Cumberland, on March 26, the Church of England has lost a distinguished scholar, and the *Scottish Historical Review* an old and valued contributor.

Dr. Wilson was the third son of the late James Wilson of Drumgoland and Billis Grove, Co. Cavan, and was born on August 28th, 1856. He graduated at Trinity College, Dublin, in 1878, and was ordained in the following year by the then Bishop of Carlisle, in which diocese the remainder of his life was

spent, until 1888 as curate of a Carlisle parish, and from that date as Vicar of Dalston, which living he held until his death.

From early manhood Dr. Wilson was a keen student, and with maturity he became a recognised authority on pre-Reformation and medieval history, and on Monastic institutions. His contributions to the columns of the *Scottish Historical Review* were largely upon those subjects, and they were rendered invaluable by the painstaking nature of his research and the acumen of his deductions.

Apart from work in that direction, his most considerable effort was the editorship of the *Victoria History of Cumberland*, the second volume of which was mainly from his pen. Some years ago he completed a third volume, which still awaits publication.

His work for the Surtees Society and the Cumberland Antiquarian and Archaeological Society bore the imprint of his scholarship, while his profound knowledge of ecclesiastical law was highly appreciated by his clerical superiors.

Of imposing presence, Dr. Wilson fully typified the dignity of his calling, together with which was blended a rare humility, a keen wit, and a sympathetic kindness of heart that endeared him to his many friends.

T. GRAY.

Reviews of Books

IRANIANS AND GREEKS IN SOUTH RUSSIA. By M. Rostovtzeff. Pp. xvi, 260, with frontispiece, 32 full-page plates, a sketch map, and 23 figures in the text. 4to. Oxford: Clarendon Press. 1922. £4 4s.

EXACTLY ten years have passed since Minns's standard work on *Scythians and Greeks* first introduced the ordinary English reader to the amazing wealth of archaeological material which the lands between the Carpathians and the Caucasus have yielded. The number of tombs seemed endless, the variety of objects recovered almost incredible, the profusion of gold ornaments positively bewildering. Professor Rostovtzeff now approaches the same subject from a rather different point of view. His book represents a scientific and closely reasoned endeavour to reconstruct, in outline, the history of the whole region by the aid of the monuments, utilizing, of course, incidentally such literary evidence as is available. His qualifications for such a task are unique. Probably no living scholar has the same intimate acquaintance with the actual remains. Certainly few have so sure a grasp of sound archaeological method, and fewer still combine, as he does, the practical knowledge and insight of the excavator and the museum expert with the broad outlook of the trained student of history, political and economic. The result is a volume, at once instructive and stimulating, which throws a flood of light, not only on the district with which it more immediately deals, but also on the subtle and penetrating power of artistic influences generally. South Russian art is seen to be linked with that of China upon the one hand and with that of Scandinavia and the Celtic lands upon the other.

The book thus makes a much wider appeal than its title appears to indicate. So far as South Russia itself is concerned, the story begins in the Copper Age, and is brought down to the foundation of the modern Russian state at Kiev in the ninth century A.D. While recognizing to the full the significance of the description of the region as 'the corridor of the steppes,' Rostovtzeff holds that it made a real and a most characteristic contribution of its own to the history of civilization, through the medium of the three peoples that dominated it successively prior to the advent of the Slavs—the Cimmerians, the Scythians, and the Sarmatians. The first of these belonged to the Thracian stock. The others were Iranians. The history of each of the three empires is traced, and their relations to Persia, Greece and Rome determined, largely on the strength of the archaeological evidence. It may well be that the conclusions reached will not command universal assent in all their details. But that they go to the

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root of the matter will not be seriously questioned. And the incidental comments will often be welcomed as illuminating; the explanation offered (p. 84) of the Scythian expedition of Darius may serve as an example. The author's main thesis is best summarized in his own words (p. 208): 'South Russia was always one of the most important centres of civilization. Three main currents are traceable: an eastern current proceeding from both Iranian and Mesopotamian Asia by two routes, the Caucasus route and the Russian steppe route; a southern current from Asia Minor and Greece, which brought with it the splendid civilization of Greece; and a western and northern current, by means of which Russia partook in the civilization of Central and Northern Europe. The three currents met in the Russian steppes, coalesced, and formed a great civilization, quite independent and extremely original, which influenced, in its turn, Central and Northern Russia and Central Europe as well. . . . I am convinced that it is wrong to make the history of Russia begin in the ninth century. In Russia, as in all European countries, the date must be put back many centuries: the history of modern Europe should begin in the protohistoric and classic period.'

One's admiration of the book cannot but be increased by the knowledge of the conditions under which it has been produced. It was written in England and France, the author an exile, his books and material inaccessible in his native country, so that he had to rely very largely upon memory. The proofs were corrected in Wisconsin, where he is now a professor. He makes generous acknowledgment of the help which one or two friends (notably Mr. J. D. Beazley) have given him in clothing his thoughts in an English dress. They have done their work wisely and well, but one or two slips have escaped them. Scholars and business men will unite in hoping that the knighthood conferred on Dr. Walter Leaf (p. 62) is only an intelligent anticipation. But in the description of the Maikop vase (p. 22) there seems to be some confusion between the mouth of a river and its source, and surely Themiscyra (p. 33) was on the southern, not the northern, shore of the Euxine. There is a full and useful index, and the illustrations, which are numerous and often novel, are excellent,

GEORGE MACDONALD.

SIR DOUGLAS HAIG'S COMMAND: December 19, 1915, to November 11, 1918. By George A. B. Dewar, assisted by Lt.-Col. J. H. Boraston, C.B. 2 vols. Pp. xxxviii, 416; xviii, 376, with maps. 8vo. London: Constable & Co. Ltd. 1922. 42s.

THESE volumes reveal a considerable number of facts which are new to the general public, and even to careful students of the history of the war. They are necessarily controversial in character, and their general result, even if we allow for the varying impression made by some of the arguments on different readers, is to place the leadership of Lord Haig in a new light. His difficulties were greater than is generally known, and his personal contribution to the solution of the problem of victory was very much larger than his own countrymen have imagined it to be. Some interesting information is given about the Somme battle in 1916, but the discussion centres

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round the campaigns of 1917 and 1918. The spring of 1917 brought great expectations, which were not realized, and, in the secrecy which shrouded the actual situation, there was a tendency to doubt if the British Commander-in-Chief had shown greater qualities than the courage and determination which he was admitted to possess. We now know that the operations of 1917 were not planned by Sir Douglas Haig, but were forced upon him. In accord with Joffre he had planned the capture of Vimy Ridge, and an early summer campaign in Flanders. The French replaced Joffre by Nivelle, and the British War Cabinet placed Haig, for certain purposes, under the direction of Nivelle. It was not unity of command in the sense in which that was achieved in 1918, for Nivelle, unlike Foch, was in actual command of the French army. His reading of the situation was wrong, for he did not believe in the German retreat, which Haig foretold, and his conduct of operations was disastrous. The result was that the British army was engaged in the battle of Arras, a victory which, after Nivelle's failure, had no strategic results, and that the operations in Flanders were postponed until too late in the year. Further, the dangerous condition of the French army rendered it necessary to persevere in these operations after the breakdown of the weather had rendered impossible the results for which Haig had hoped. The failure of Nivelle, and the subordination of the British plan to his ambitious scheme, pre-determined the whole campaign of 1917. From the wreck of his own proposals, Haig, in defiance of Nivelle's wishes, saved Vimy Ridge, and the value of his victory was obvious in the following year.

The German advance in 1918 came as a surprise to the British public, but it did not involve any popular injustice to Sir Douglas Haig. It was realized at the time that the Cabinet had set him an impossible task, and that, if the men who were sent to France immediately after the catastrophe had been sent when the Commander-in-Chief begged for them, the great retreat would not have taken place. Even with regard to Sir Hubert Gough, public opinion soon came to appreciate the fact that he was free of responsibility for the defeat, and that his generalship had prevented a graver disaster. It is rather about the period of victory than about the period of trial that general opinion has been misled. The unity of command, which the politicians had shirked and evaded, came about at the request of Sir Douglas Haig, and, when the politicians lost courage and suggested going back upon their own decision, he stuck loyally to his agreement. He was right about the German attack, not only when the Versailles Supreme War Council was wrong, but also when the French, including Marshal Foch, failed to realize that the operations against the British constituted the main German effort in March. The great attack in the Amiens area on August 9 was his in conception as well as in execution. The exploitation of this success led to a serious difference of opinion between Haig and Foch, which resulted in the acceptance of Haig's plan and in the Battle of Bapaume. Again, in September, the Generalissimo adopted Haig's plan of convergent attacks, in preference to his own original suggestion. These alterations in the strategy of the period of victory were not mere changes in detail such as are often made by a Commander-in-Chief in deference to

the opinion of officers responsible for the execution of his orders. They were fundamental alterations in the whole conception of the operations, and they show that Foch found, and acknowledged, in Haig a soldier of a calibre like his own.

There is one point in particular with regard to which the world scarcely yet understands what it owes to Lord Haig, for it was he who brought the great struggle to a conclusion in 1918. The British army alone was in a position to give the final blow to German resistance, and the decision rested with the British authorities, civil and military. Marshal Foch, in view of the burden continuously borne by the British, could not ask for an extension of that burden, nor was he in a position to judge what was still practicable for the troops. The War Cabinet hesitated, and its members went so far as to warn the Commander-in-Chief, in a personal communication, that they would not share the responsibility if his persistence in his victorious operations involved severe casualties. It is clear that the home authorities, civil and military, failed to grasp the change in the situation. Haig understood and persevered, and the war ended in 1918, instead of, as the Government expected, in 1919.

ROBERT S. RATT.

FIVE CENTURIES OF RELIGION. By G. G. Coulton. Vol. I. St. Bernard, his predecessors and successors, 1000-1200 A.D. Pp. xliii, 578. 8vo. Cambridge : The University Press. 1923.

THIS is the first instalment of a series of three volumes in which Mr. Coulton aspires to write from the original sources a general account of medieval monasticism. His title page shows that he treats of 'religion' in the medieval sense, that is, monasticism, though he hopes in later volumes to deal with other religious currents during the five centuries, 1000 to 1500, to which he limits his survey. The book is planned on large and comprehensive lines. It need hardly be said how useful a general synthesis of medieval monastic history would be, and what admirable courage in these days of minute specialisation is shown by a single scholar who dares to make such an attempt. Mr. Coulton has many high qualifications for the ambitious scheme which he has envisaged, and which he has, he tells us, nearly carried to completion. He is a man of very wide learning, who has at his fingers' ends many medieval texts, foreign even more than British, and he shows care and accuracy in his use of them. He has concentrated his studies for many years on this particular field, and is not overwhelmed by the mass of material which he has collected. He writes also with immense sincerity and conviction, has something of the fervour of the missionary, and is always thoroughly in earnest. He has the power, too, of combining his texts to form vivid pictures, so that his work is always interesting and alive. Yet despite these high gifts this volume cannot be accepted as a true study either of medieval monasticism or of medieval religion. It is not, to put it bluntly, history at all. It is an able and eloquent anti-clerical pamphlet on a colossal scale. Mr. Coulton has convinced himself that medieval Catholicism is a very evil thing, and that monasticism is even worse, because it is the most characteristic embodiment of the medieval

point of view. He is, therefore, out to prove how at all times and at all seasons medieval religion is something hideous, superstitious, and untrue.

More than a third of the book has no special relation to monasticism at all. The 'popular anthropomorphism and Tritheism,' the 'dualism,' the 'devil worship,' the 'doctrine of Transubstantiation,' 'Mariolatry,' and 'the low status of medieval woman,' on which Mr. Coulton discourses, were not modes of thought limited to monks and friars, but were widely accepted in non-monastic circles throughout most of the Middle Ages. And it is not fair to treat ignorant travesties of orthodoxy as on the same plane as the doctrine of the Eucharist. When we have worked through this gloomy delineation of medieval faith, we get to St. Benedict, St. Bernard, and other matters more nearly related to Mr. Coulton's subject, but the black picture is still drawn with the same indiscriminating pencil. A few perfunctory tributes to the greatness and goodness of St. Bernard, a few remarks that Mr. Coulton is more concerned with the popular manifestations of medieval religion than with its theoretical basis, do little to redress the balance. Incidentally the discerning historian will gain much valuable information from Mr. Coulton's wide learning and vivid way of putting things, but he who studies medieval history for the first time will be both confused and misled. It is better that history should not be written at all than written in such a spirit. This is a hard thing to say, but Mr. Coulton, who is candour itself, will appreciate candour in others.

Mr. Coulton prides himself on his accuracy and scholarship, and challenges his critics to deny any of his specific statements. All medievalists will recognise the dark sides of medieval religion and life, its grimness, its squalor, its violence, its superstitions, and its crudity. They will agree with Mr. Coulton in repudiating the poetic visions of an ideal age of faith whose literary embodiments provoke his wrath and indignation. Even allowing that much of what Mr. Coulton says may well be substantially true, the falseness of the picture drawn by him remains equally glaring. There is another and a better side to medieval life of which Mr. Coulton seems almost unconscious. The first business of an historian is understanding and sympathy. He must, for the time at least, ignore the present and find his spiritual home in the past. He must not trouble himself overmuch about Cardinal Gasquet or Mr. Belloc or Mr. Wells, or any other of Mr. Coulton's favourite aversions. He must try to see how the men of his period thought and felt. He need not share their views. He may loathe the monastic ideal and disbelieve in Catholic theology and in all organised ecclesiastical systems, but, if he would appreciate the Middle Ages rightly, he must understand how it was that at certain periods a common impulse to the cloister profoundly moved the best minds in Europe, and drove them to adopt the life for which Mr. Coulton has such holy horror. He must realise that there was a good as well as a bad side to monasticism. He must appreciate how much of the best of the civilisation that we now enjoy has its roots in the Middle Ages. But to Mr. Coulton sympathy with medieval ideals would be traffic with evil. His burning zeal, his righteous anger, prevent him from seeing more than one side of the question. Accordingly he has in these days, when so

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much is talked about history as a science, set forth an essentially unscientific work as a contribution to historical learning.

It is not easy to condemn so fundamentally a book based on so much knowledge and labour as is Mr. Coulton's study, but it is only right, as our author would be the first to admit, to tell the plain truth. It is lamentable that a man of Mr. Coulton's high character and great powers should feel it a religious duty to publish such a book, and it is much to be desired that his conscience would allow him to desert propaganda and devote his learning to writing real history. But with the didactic motive so strongly expressed in his own book, Mr. Coulton must forgive a review which in the sincere flattery of imitation has dropped into a somewhat homiletic strain.

T. F. TOUT.

HABAKKUK BISSET'S ROLMENT OF COURTIS. Volume II. Edited by Sir Philip J. Hamilton-Grierson, LL.D. Pp. x, 450. 8vo. Scottish Text Society. Edinburgh: William Blackwood and Sons. 1922.

THE second volume of this quaint author's Rolment of Courts deals largely with old-time Scottish ecclesiastical matters. In the forefront comes Bagimont's Roll of Benefices throughout the various sees, with an account of the establishment of the Commissary Courts, which took the place of those of the Bishops' officials after the Reformation, and their rules of procedure in confirmation of testaments, etc. Then there are lists of the religious houses of the various monastic orders, their abbeys, priories and nunneries, and catalogues of the apostles and evangelists, as also of the seventy disciples and of those who about that time suffered martyrdom for the faith, all with historic notes of their lives and of their deaths. Added to these there is a list of the Popes, 238 in number, down to the year 1621, and another of the bishops and others in Scotland who had the honour of consecration conferred upon them as saints, giving their special days in a monthly calendar.

In secular affairs there is a summary of the procedure of the Court of Session in the time of Queen Mary, and a catalogue of the kings of Scotland divided into two categories, one containing such of them as for the maintenance of their kingdom, freedom and liberty were moved to war and either died or were victorious in battle, ending with King James the Fourth, and the other giving the names of those who were inclined to greed and cruel tyranny or were intruders or usurpers of the Crown, ending with Donald Bayne about 1098. He has also a panegyric upon King James the Sixth to whom he looked for the patronage of his projected work, the expectation being transferred after that King's death to his son, Charles the First. Another section of the book relates the ancient laws for the regulation of traffic upon the seas, with special reference to those of Scotland, England and France and the functions of the courts of Admiralty. And, finally, there are given the laws dealing with burghs and their privileges. This publication brings before the reader much that is now hidden away in old and forgotten *tomes*, and comes to us edited with scholarly carefulness.

HENRY PATON.

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322 Steuart : Trial of Mary Queen of Scots

TRIAL OF MARY QUEEN OF SCOTS. Edited by A. Francis Steuart, Advocate. Notable British Trials Series. Pp. xvi, 184. Demy 8vo. With 7 illustrations. Edinburgh : William Hodge & Company, Ltd. 1923. 10s. 6d.

MARY STUART was tried on the charge of conspiring against the life of her cousin Elizabeth of England, found guilty, condemned to death and executed. In this book, Mr. Steuart gives in detail the evidence brought against Mary at the trial, some of it published for the first time. He also examines the legality of the entire proceedings, and furnishes an account of the ill-fated Queen's last days and execution. With the exception of the detailed evidence of Mary's secretaries, there is really no fresh light thrown on the trial and proceedings, but the book should become an authority owing to the very full and concise manner in which all the facts have been elicited, confirmed, marshalled and put together.

After reading and examining with care the whole of the evidence, old and new, one cannot but feel that it was lamentably insufficient to justify the verdict of the Commissioners. The prosecution depended almost entirely upon the statements, actually confessions, of Mary's secretaries, Nau and Curle, neither of whom himself appeared at the trial. Mary had no Counsel allowed her, even though she pleaded ignorance of the English law ; her papers and notes were taken from her and, in short, every difficulty put in the way of her defence. The entire trial was a travesty of justice, and she was prejudged guilty—not because the Commissioners actually believed that Mary ever aimed at the death of Elizabeth, but solely because they disliked and feared her religion. Throughout the trial the Queen never lost an iota of her dignity, and withal showed an alertness of mind somewhat confounding to her accusers and judges. In an impassioned outburst she objected that her secretaries might insert into her letters matters she had not dictated to them, and further that letters might fall into their hands which she never saw. 'The majesty and safety of all princes falleth to the ground,' she added, 'if they depend upon the writings and testimony of secretaries.' The correspondence read at the trial, and upon which the Queen was condemned, comprised not even the original letters but only copies, and when she protested against this injustice her protest was ignored.

The trial was prorogued without any definite pronouncement as to Mary's guilt or otherwise being made by the Commissioners, and the adjourned Court met again in the Star Chamber a week later. On this occasion Queen Mary was not present, but her secretaries, Nau and Curle, appeared and gave their testimony. At the trial then the accused was not confronted with the witnesses against her, and at the proceedings in the Star Chamber the witnesses gave their evidence in the absence of the accused. Such a manifestly unjust and unfair arrangement shows clearly the determination of the Commissioners to find Mary guilty of her alleged crime without taking the risk of her innocence possibly being proved by a confrontation between the Queen and her secretaries. A verdict of guilty was returned, but no sentence was pronounced. A few days later Parliament petitioned Queen Elizabeth to give authority for the speedy

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execution of the Queen of Scots. Elizabeth pretended to give much thought to the matter, but in a comparatively short time she signed the necessary order, and Mary was beheaded at Fotheringay.

The narration of her last days, written by Richard Wingfield, which is given in the book, shows better than any previous incident in her ill-starred life the fineness and nobility of Mary's true character, and also her complete and sincere belief in the Roman Catholic religion.

Mr. Steuart has produced a book which, as a historical study, will prove of the first importance. At the same time he shows a lack of sympathy with Mary Stuart which irritates, an impartiality which borders at times even on unfairness, and a judgment regarding the legality and general conduct of the trial which we think unjustified by the documentary evidence he has been at such evident pains to secure.

D. A. MAXWELL.

THE BRONZE AGE AND THE CELTIC WORLD. By Harold Peake, F.S.A.
4to. 201 pp. 14 plates. 26 figs. and maps. London : Benn Brothers Ltd. 1922. 42s.

THE material for the fifteen chapters of this handsome volume formed the substance of six lectures delivered by the author at the University of Wales, Aberystwith, furnished with numerous plates, and somewhat rearranged and expanded. The problem which Mr. Peake set himself to solve was that of the cradle of the Celtic tongues and their distribution into the areas in which they were found two thousand years ago, and to effect this he endeavours 'to review the condition of these areas, both from the standpoint of prehistoric archæology and physical anthropology, to see whether the evidence derived from these sciences, taken together with that drawn from comparative philology and the study of place names, can help to reach a solution.' After reviewing the characteristics of the inhabitants of Celtic lands in pre-neolithic times, the author proceeds to develop theories of the origin of trade in prehistoric times, and from the occurrence and forms of the Bronze Age axes and weapons to indicate the routes taken by the early traders. The ultimate aim of these traders is held to have been the acquisition of gold, and it is believed that the trade routes can be plotted down on a map from the occurrence of the bronze axes.

This is a theory which is open to two objections. These may be well illustrated in its application to Scotland. In the first place it disregards the local manufacture, which the presence of moulds testifies to, and further, it presupposes the existence of gold in such regions as Caithness and Orkney, where the precious metal appears to be unknown, but where prehistoric remains of megalithic character are abundant.

To fortify his theory, Mr. Peake postulates a hitherto unidentified race named by him 'the prospectors,' whom he regards as having spread the cult of megalithic monuments while travelling in search of gold, silver, copper, etc. The type he has recognised in a restaurant in Athens, in Florence, at the present day as well as represented in fifteenth century pictures, in Liverpool and in London, in fact where men most do congregate for sea-borne commerce. He holds that the megaliths in the British Isles in the main coincide with the metalliferous areas which these people

sought. This is not always so. Taking again the case of Scotland, gold has been known from early times to exist in Argyll, Sutherland, and in the Lead Hills in Lanarkshire, but the occurrence of megalithic monuments is by no means restricted to these areas, while from the last named they are conspicuous by their absence.

Nor is this the only theory to which exception may be taken. The presence in Britain of the intermediate forms in the development of the bronze leaf-shaped sword indicates rather a concurrent local evolution, no doubt affected by extraneous suggestion rather than a continuous infiltration of numerous fresh forms by warlike invasion or trade.

Though archæologists will not agree as a whole with many of the theories advanced in this book, it contains much that is of value in the presentation for comparison of the different sword forms, and in the brief statements of the older theories dealing with the subject. There is a full bibliography and a good index.

ALEX. O. CURLE

ARCHAEOLOGIA AELIANA, OR MISCELLANEOUS TRACTS RELATING TO ANTIQUITY. Third Series. Edited by Robert Blair, M.A., F.S.A. Volume xix. Pp. xxxiv, 273. With many illustrations. 4to. Society of Antiquaries, Newcastle-on-Tyne. 1922.

THIS volume maintains the high standard of its predecessors. Mr. John Oxberry contributes an obituary notice of Rev. Cuthbert Adamson, a vice-president of the society and grandson of the first secretary, and the memory of Mr. Robert Coltman Clephan, F.S.A., another vice-president, is perpetuated by a similar notice from the pen of Dr. F. W. Dendy. Mr. J. Crawford Hodgson is the author of three original papers of considerable local interest and merit—‘The Company of Saddlers of Newcastle,’ ‘The Lordship, the Manor and the Township of Beanley,’ and ‘The Hospital of St. Lazarus and the Manor of Harehope.’ Mr. C. H. Hunter Blair, who very ably placed on record and classified the Seals of Durham, now turns his attention with equal success to the Seals of Newcastle-upon-Tyne, and in a second paper on the ‘Armorial Evidence for the descent of Roger Thornton and his wife Agnes,’ displays an intimate knowledge of heraldry. An illustrated paper on Benwell Tower, by Mr. W. H. Knowles, is a valuable addition to the topography of Newcastle. Mr. Hamilton Thompson’s contribution to the present volume is, ‘On a Minute Book and Papers formerly belonging to the Mercers’ Company of Durham.’ ‘Notes on the old glass of St. John’s Church, Newcastle-upon-Tyne,’ by Mr. R. J. S. Bertram, is well written and illustrated. Further light on the architectural history of Tynemouth Priory is given by a lucid paper by Mr. C. C. Hodges, with excellent drawings and photographs. Professor R. C. Bosanquet contributes a paper ‘On an Altar dedicated to the Alaisiagae,’ and another entitled ‘A Newly-discovered Centurial Stone at Housesteads,’ at which fort he conducted important excavations some years ago. Some ancient deeds of St. Andrew’s Church, Newcastle-upon-Tyne, form the subject of a paper by Mr. A. M. Oliver. The contribution by Lt.-Col. G. R. B. Spain, upon the Black Dyke in Northumberland, bears evidence of careful research and great zeal. It is amply illustrated by maps and

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sections, and is a valuable addition to present-day literature relating to this earthwork, which, as Col. Spain himself states, 'has always been one of the mysteries of Northumberland.'

JOHN GIBSON.

LECTURES ON THE HISTORY OF ROMAN RELIGION FROM NUMA TO AUGUSTUS. By William Reginald Halliday, B.A., B.Litt. Pp. 182. 8vo. Liverpool: The University Press of Liverpool, Ltd. 1922. 5s.

THIS work shows that the early religion of Rome was singularly impersonal and, as we should say, unspiritual. The *numen*, or the supernatural force, the power of which made success or failure, inspired the *Religio*, the feeling of awe known by primitive man 'in the presence of that which he cannot explain.' Religious rites followed to try and propitiate the *numen*, but though these grew more elaborate with the Etruscan kings, no real deity in the modern sense was worshipped. The family had many rites to propitiate the *numen*, but the individual 'passed to death to join an un-individualised group of ancestral departed spirits, the *di parentum*,' or later *di manes*. To us this is not an inspiring religion. It is true that later, Vesta, the spirit of the hearth, and Janus, the spirit of the door, became thought of as gods, but originally they were indeterminate ideas though centres of a solid family worship, which, if it had not much certain foundation, yet had a solemn ritual.

The farm had also a certain religious sequence, although the gods were also very shadowy until identified later with gods of the Greek cult, when they grew more definite. Nature worship supplied festivals and the Roman legal spirit elaborated them. The religion of the state followed. A great deal of it seems to us pure opportunism. It, like that of the home, centred round two *numina*, Vesta and Janus. The Pontifices saw to the rest. Augurs were called in when they thought fit and saw (sometimes) what the State needed. Human Sacrifice, originally unknown or rare, was used in a crisis, and everything was bent towards Statecraft. Temples were constructed and succeeded the early groves for worship through Etruscan influences from a debased Hellenism. The cults of subject peoples were adopted, and foreign divinities introduced. The Sibylline books increased confusion and priestly power, and added more Hellenism. By the first century B.C. religion, we are told, had become 'mere empty ceremonial destitute of real meaning.' The Court religion with its deified Emperors endured for some time as dry bones, then came the mystic cults of Isis and Mithras, which paved the way for the missionaries of Christianity. The book is interesting as tracing the Roman religion step by step up to the commencement of the Empire.

A. FRANCIS STEUART.

PROCEEDINGS OF THE SOCIETY OF ANTIQUARIES OF SCOTLAND. Session MDCCCXXI.—MDCCCXXII. Vol. lvi. Fifth Series. Vol. viii. Pp. xxxiv, 399. With many illustrations. 4to. Edinburgh: Printed for the Society by Neill and Company, Ltd. 1922.

By fulness of treatment and wealth of illustration the paper by Mr. Albert Van de Put, of the Victoria and Albert Museum, upon the 'Monypenny

Breviary occupies a prominent place in this volume. The evidence of the well-known intercourse and of the close relations between Scotland and France receives reinforcement from this beautifully illustrated Breviary. The manuscript obtained its artistic decoration from illuminators or miniaturists who worked at Bourges in the last quarter of the fifteenth century. Mr. Eeles adds an informing note on the liturgical use to which the book belonged. It seems to be definitely Franciscan, and yet its magnificence consorts ill with this Order's professed devotion to simplicity and poverty. An earthenware pot found at Dunbar and three short cists on Dunbar Golf Course are treated of and illustrated with reference to discoveries of a similar kind by Mr. J. Graham Callander, who contributes also two other papers upon, first, three bronze age hoards recently added to the National Collection, and secondly, a food vessel urn from Oban, Argyll. Mr. John H. Dixon gives an account of the remarkable cup-marked stones in Strathtay. Mr. Ludovic M. Mann's interest in Tiree from an archaeological standpoint is borne out by his frequent visits, and these have resulted in a valuable communication upon the ancient sculpturings in the island.

Mr. J. Wilson Paterson contributes an account with plans and sections of the well-known Broch of Mousa in Shetland. The Ancient Monument Department of H.M. Office of Works has taken it over, and thus the results of a more exhaustive excavation and more careful survey than those of former antiquaries are given, thereby correcting and supplementing the descriptions of the late Sir Henry Dryden and Mr. J. Bruce of Sumburgh.

An outstanding article by James E. Cree and A. O. Curle furnishes details of the work of excavation on Traprain Law during the summer of 1921. The writers have found it necessary to modify the theory of four periods of occupation of the site. The occupation, it now appears, was continuous and the Law was an *oppidum* or walled town. The gradual unfolding of concrete fact as to this early place of strength and its inhabitants is a remarkable proof, if proof were needed, of the value of spade work in tracing and bringing to light details of man's habitation and mode of life here in early times. Illustrations of various finds, stone axes, flint implements, bronze axes, pins and razor, also of iron objects, accompany the text. Altogether it is a noteworthy account of great accomplishment.

The paper on the architectural history of Huntly or Strathbogie Castle, one of the noblest old baronial ruins in Scotland, arrests attention. Mr. Douglas Simpson sums up his investigations in five propositions, of which one is that 'the original fortress, in the thirteenth century, was a timbered mound-and-court earthwork of the Norman type, which continued in use until burned by the Earl of Moray in 1452.' This burning caused the abandonment of the earthwork and the building of the stone castle.

Miss M. A. Murray edits two trials for witchcraft, to which is prefixed a note giving her views upon the subject of what she calls 'one of the religions of the Lower Culture.' These views have called forth, and will continue to call forth, adverse criticism. One can only re-echo here the remark of an American critic of the writer's theory that it is a matter for deep regret that Mr. Léa did not live to complete his work upon this subject. The

materials which he gathered will, we are glad to learn, be ere long given to the press.

'Observations on the Pre-Neolithic Industries of Scotland' is the title of a very valuable paper by the Abbé Breuil, whose name as the greatest living authority upon pre-historic man gives weight of no ordinary nature to his views. The relatively recent date of the Scottish brochs as now existing is held firmly by the Abbé after mature consideration and examination of the objects—painted pebbles—from these brochs.

Dr. George Macdonald comments upon a hoard of coins found in Linlithgowshire. In a very interesting summary and description he deals with the three-quarter-face groats, whose precise attribution has long been, he tells us, matter of dispute. The find contained 38 groats and 2 half-groats of this variety, but it has not settled the question, and these coins must still be attributed to James III. or IV.

Mention must be made of Dr. Hay Fleming's communication, 'the Accounts of St. Salvator's College, St. Andrews, from 1679 to 1689 and details of the revenue in 1691.' Doctor Skene, the Provost or Principal of the College, was called to account and eventually deposed by a Commission of Visitors appointed by the Scottish Parliament in 1690, and these Accounts of Charge and Discharge were, after refusal, eventually produced to the Commission. They are of value historically, and have received thorough editing at Dr. Fleming's hands.

The volume testifies by its articles, illustrations and general format to the abounding vitality of the Society.

JOHN EDWARDS.

A HISTORY OF ENGLISH LAW. By W. S. Holdsworth, K.C., D.C.L. Third Edition. Vol. II. Pp. xxxi, 661. Vol. III. Pp. xlvi, 695. Demy 8vo. London: Methuen & Co. 1923. 25s. a volume.

Two more volumes have now appeared of Professor Holdsworth's revised, and indeed rewritten, *History of English Law*. The first volume was introductory, and dealt with the History of the English Judicial System. In the second and third volumes the learned author comes to grips with the historical development of the substantive rules of the law itself. He deals first with Anglo-Saxon Antiquities in the period between 449 (the date is that of the landing of the Jutes in the Isle of Thanet) and 1066, and then, throughout the greater part of these books, traces the development of the Medieval Common Law. The close of the third volume brings the history down to 1485. Thus a period of vital importance is covered; the foundations of the English Common Law were laid broad and deep under the Norman kings and their successors, and the names of Glanvil, Bracton and Littleton are alone enough to show how momentous are the topics here discussed.

The fourteenth and fifteenth centuries in particular constitute a period in which law means history. Never was a knowledge of law so widely diffused, or, be it said, so expedient. 'It was as necessary for self-protection as a knowledge of the use of warlike weapons.' It is scarcely surprising to learn that a testator directed that £100 'be well, securely,

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and discreetly guarded in a certain secret place,' to defend such pleas concerning his land as might happen to be brought against his heirs. This too was the period in which the rules of English law were, in the words of Roger North, 'scarcely expressible properly in English.' The lawyers continued to use French and Latin long after the statute of 1362, which enacted that pleas should be pleaded in English.

Through all the maze of conflicting authorities and theories, of histories, year-books, and law reports, Professor Holdsworth keeps the noiseless tenor of his way. He is always learned, and, where it is humanly possible, always avoids dulness. It is not only a history of English law which he gives; there is also, for example, a valuable chapter on the Intellectual, Political, and Legal Ideas of the Middle Ages. His general conclusion on this topic is that to law and legal thinkers we owe that supremacy of the idea of right which for centuries was (since 1914 we cannot say 'has been') one of the acknowledged foundations of European civilization. Law is so essentially the product of its time, and so much shaped by the ideas of each successive period, that a knowledge of legal development is now regarded more as a necessity than as a luxury for the serious student of history. In this domain it would be hard to suggest a more reliable or luminous guide than the author of this work.

T. B. SIMPSON.

A SHORT HISTORY OF THE BRITISH COMMONWEALTH. By Ramsay Muir. 2 vols. Vol. II. The Modern Commonwealth—1763 to 1919. Pp. xvi, 814. Medium 8vo. London: Geo. Philip & Son. 1922. 15s.

IN the preface to this second volume, carrying on the tale from 1763 to 1919, Mr. Muir laments the 'tyranny of space' against which he has to contend. He emerges from the fight, however, with all the honours of war, achieving a surprisingly comprehensive survey in which political events are not allowed to oust from treatment, as so often, the social, economic, literary, scientific, or religious movements in which they were set. Mr. Muir's clear narrative is freshened, but not retarded, by suggestive allusions. The book forms a most useful work of reference, and a synthesis of information scattered hitherto in many different writings. The reader will be irritated or encouraged, according to temperament, by the buoyant optimism with which the author accepts historical failures or applauds successes; in any case he will appreciate the sincerity of treatment and moderation of statement. The two volumes, crowded with names, must have presented considerable difficulties for the indexer, who has been scrupulous in dealing with them. The digestion of the references under group-headings—Battles, Treaties, and so forth—is not always an advantage. The unregenerate reader would rather, for example, find Reform Acts so indexed, than range the alphabet from Franchise to Redistribution in a two-column list headed *Statutes*. However, it is certainly on a note of gratitude, not of criticism, as concerns both author and indexer, that the present writer wishes to close.

HILDA JOHNSTONE.

Rohde : The Old English Herbals 329

THE OLD ENGLISH HERBALS. By Eleanor Sinclair Rohde. Pp. xii, 243, with coloured frontispiece and 17 illustrations. Crown 4to. London: Longmans, Green & Co. 1922. 21s.

THIS fascinating book, which the authoress describes as a 'labour of love,' will appeal to all who love flowers and gardens. It is full of unexpected interest on other subjects, and throws light on the life of the far past. The fragmentary glimpses of Saxon times are particularly attractive.

In the ceremonies and charms connected with plant lore, Miss Rohde finds traces of a religion compared to which 'the worship of Woden is modern.' She introduces us to ancient gods and Nature deities, among them Eostra, 'that radiant creature of the dawn' whose name, she tells us on the authority of Bede, the Christian missionaries transferred to Easter. At the same time she gives a vivid picture of the terrors which haunted our Saxon ancestors, the evil demons who lived in their marshes and forests. We are proud to find that 'the Anglo-Saxons had a much wider knowledge of herbs than the doctors of Salerno, the oldest school of medicine, and the oldest University in Europe.'

Miss Rohde writes of the 'Leech Book of Bald' with enthusiasm, and she regrets the disuse of Saxon plant names, some of which she mentions with affection. She quotes many prescriptions, from which we gather that the Saxons must indeed have been a hardy race, but the nature of the cures would not encourage imaginary ailments.

We leave the Anglo-Saxon herbals with regret, for we found them perhaps the most interesting part of this volume. This kind of interest does not end with Anglo-Saxon times, for William Copland (about 1200) closes his book with a series of charms, some of which would still be useful—'to stop a cock crowing' for instance, or 'to keep flies away from a house.' Gerard's *Herbal* gives a wonderful list of the wild flowers growing in London in Elizabethan days, wild bugloss in Piccadilly, lilies-of-the-valley and numerous other plants on Hampstead Heath, marsh mallows 'very plentifully in the marshes of Tilbury Docks.' Gerard had a wonderful garden, and we still sympathize with him on the loss of his precious scammony of Syria, which was pulled up by mistake as a weed while he was from home.

The chapter on the colonization of America by the Spaniards is arresting. It is curious to find tobacco used first to heal wounds and combat poison, yet Monardes, a Spanish doctor, assures us that the Red Indians healed their wounds with the juice. One cannot help envying the gardeners to whom a new world opened suddenly, and who received presents of roots and seeds, unknown before, from across the ocean. The world must have seemed very large, and the possibilities endless.

The book of 'John Josselyn, Gentleman,' who visited America fifty years after the landing of the Pilgrim Fathers, contains a 'list of plants which the author found, and which were common in England also,' and a list of common weeds, such as groundsell, shepherd's purse, dandelion, etc., which were unknown before the Pilgrim Fathers landed. Miss Rohde writes that 'the plantain, one always learnt as a child, follows the English colonist wherever he goes,' and quotes as curious confirmation of this

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Josselyn's note that the Indians called it 'Englishman's Foot, as though it were produced by their treading.'

Coles, who in his *Art of Simpling* devoted some chapters to the 'Joys of Gardening,' appeals to us. He advises 'gentlemen which have little else to doe' to spend their time in their gardens, digging and weeding, and urges gentlewomen to weed also, 'kneeling upon a cushion,' but adds the warning, if the ground be not too wet. So shall they keep from idleness and evil company, and benefit their health.

The illustrations and reproductions from the *Herbals* are beautiful. Miss Rohde will not allow us to describe them as 'quaint.'

RUTH E. M. RATT.

THE ANGLO-NORMAN PEACEFUL INVASION OF SCOTLAND: 1057-1200.

ORIGIN OF GREAT SCOTTISH FAMILIES. By James Coutts. 8vo. Pp. xvi, 160. With seven plates. 8vo. Edinburgh: Andrew Kinross. 1922. 7s. 6d.

THE origins of families have always a fascination for the historian or genealogist, and he is never satisfied until he has endeavoured, though often baffled, to account for the beginning of the special family with which for the moment he is concerned. This book should help him, if not in every case to conviction, at least with the suggestions which the author offers, either from himself or from others whose opinions he quotes. He has made very considerable and successful research and does not claim infallibility or to have said the last word on the question (which indeed is never likely to be said), but his work is a useful contribution thereto.

The period with which he deals is approximately the century and a half before the death of William the Lion, but more especially the thirty years of the reign of King David the First, who, he thinks, instead of being styled, as he usually is, the 'Sair Sanct' for the Crown, should be called the 'Good King' and gratefully remembered not only for his great governing capacity but also for his services as a 'Royal Emigration Agent.' Some, however, will still cherish the opinion that the methods of David as well as those of his father and mother, Malcolm Canmore and Queen Margaret, were drastic enough and somewhat unfair to the native Scot. The author speaks sympathetically of the sufferings of the Saxon at the hands of the Norman invader, but thinks that the suppression of the Celt was a good thing. Perhaps it was. But be that as it may the fact remains that it was in these times that the Norman, Saxon and Flemish settlers were imported into Scotland and there they remained to influence its destiny for many a day.

The author includes in his long list of families the names of most which rose to any eminence. Some of these old names have changed their form, as for example, Baliol is now represented by Baillie; and it is doubtful if others were ever anything than place names, such for instance as Eddleston and Flemington. Another old Flemish name, Tancred, is still in use. Again, Chalmers and Chambers are not really different names, both deriving from *De Camera*, and 'chalmer' being but a Scottish form of 'chamber.' Reader and student alike will find much to interest him in the book.

HENRY PATON.

Vinogradoff : Historical Jurisprudence 331

OUTLINES OF HISTORICAL JURISPRUDENCE. By Sir Paul Vinogradoff, F.B.A., Corpus Professor of Jurisprudence in the University of Oxford. Volume One. Introduction; Tribal Law. 1920. Volume Two. The Jurisprudence of the Greek City. 1922. Pp. viii, 428; x, 316. 8vo. Oxford University Press.

To the student of historical jurisprudence it is hardly possible to exaggerate the importance of the summing up of his lifework on which the distinguished successor of Maine and Sir F. Pollock as Corpus Professor of Jurisprudence at Oxford here embarks. In the Introduction to Volume One there are some interesting remarks on method. Sir P. Vinogradoff joins in the usual feud of the historians against the analytical, or 'rationalistic,' school of Bentham and Austin. We think something might be said on the other side. But if he is a little less than just to the 'rationalists,' Sir P. Vinogradoff, like Mr. Frederic Harrison, impartially recognises the limitations of the purely historical, or 'nationalistic,' school of Savigny. Here he is heavily underlined by Prof. Roscoe Pound.¹

For Volume Two the sources are Aristotle, Plato (*Laws*), the Attic orators and inscriptions. Many will remember Maine's vivid contrast between the Romans who succeeded in evolving from their primitive tribal customs a system fitted to regulate the life of the modern world by a process by which the law for the time being was always observed as law, and the Greeks who were 'quite unable to confine themselves within the strait waistcoat of a legal formula.' This picture of Greek legal laxity is in many respects borne out by Sir P. Vinogradoff. On the other hand, if the essence of law is a general rule, its very generality makes it unfair in particular cases, and Aristotle's definition of equity (or *ἐπιείκεια*) as the correction of law, where law is defective by reason of its generality, is referred to. One interest of Greek law is the combination of primitiveness and modernity. Thus, on the one hand, Greek society is shown, after all democratic reforms, to rest on a basis of agnatic kindred. 'In the order of avengers the agnatic group of the phratry follows immediately on the narrower' group of the nearest (cognatic) relations. Then again the conception of agency as applied to groups is undeveloped. State obligations must be corroborated by the oaths of large bodies of individual citizens, and private citizens are bound for state debts. Or, again, not only is there no public prosecutor (as, for many purposes, there is not, or recently was not, in England) but (as in Rome) crimes like theft are prosecuted not as crimes but as private wrongs. On the other hand, the Greeks early arrived at the treatment of contracts on substantial, rather than on formal, considerations. In fact, the Greeks were largely a nation of traders, which affected their law of contracts and moveable property.

In the realm of public law, an interesting point is the responsibility of politicians. In the England of the sixteenth and seventeenth centuries statesmen, like the royal physicians of oriental tales, plied their art with a halter round their necks. This might be defended, more or less, on the ground of abuse or misuse of plenary power. That the plenary power in

¹ 'History as a juristic god has done no more for us than authority and philosophy which it succeeded,' *Interpretations of Legal History*, p. 20.

Athens was in the Demos made no difference. 'A legislator, a statesman, an orator, who had persuaded the people, was not absolved from responsibility when the people adopted the measures advocated by him. He remained responsible for the results, and if they were disastrous or discreditable he became the scapegoat on whom the Demos took revenge for its folly.'

Students will await with interest the promised volume on Medieval Jurisprudence.

ANDREW A. MITCHELL.

THE BOY BISHOP AND OTHER ESSAYS ON FORGOTTEN CUSTOMS AND BELIEFS OF THE PAST. By Walter Clifford Meller, M.A. Pp. x, 157. 8vo. London : George Bell & Sons. 1923. 7s. 6d.

ALTHOUGH we think there will be few who will regret the actual passing of the quaint observances, of which these essays treat, all students of History will welcome such a record of them as is given to us in these pages. We are taken back to the Middle Ages and shown the beginning and origin of the legends, traditions and customs which prevailed for one or more centuries.

The appointment of a Boy Bishop appears as early as 1300 to 1350 and the institution remained in existence till the year 1558. A Boy was elected 'one who has served the longest and has been most useful to the Cathedral, provided that he is sufficiently good looking and that he must have a good voice.'

At Christmas time he was attired in episcopal robes and took precedence of all ecclesiastics, even of the highest rank in the churches. He officiated and preached and even exercised the right of patronage during his short reign. The clergy were expected to house him and his companions—consisting sometimes of as many as fifteen boys. It seems to have been intended to exemplify the beauty and innocence of youth, and to be an object lesson showing how a little child was set up in their midst. The strange thing is that such a custom lasted so long as a couple of centuries both in England and France.

The other essays will interest students and antiquarians. The Holy Grail, The Glastonbury Tradition, King's Healing, Origin of the Fleur de Lys, Cramped Rings, Legend Makers, Political Songs of Other Days and Saint George.

The Glastonbury Tradition, namely, that Joseph of Arimathea came to Britain and first preached Christianity there, being resident and dying at Glastonbury, is discussed, and the evidence for and against such a belief is set forth.

The essay on 'The King's Healing' is startling in the many and various details which tell us of the cures effected by the royal touch in open court, in palaces, in cathedrals, before great multitudes, tested when the cures took place by the best physicians of the day. There was at one time a service for the Royal Healing in the Book of Common Prayer.

We commend these essays to students of medieval times. They are on the whole well written, although there is no charm of style, and they are the result of considerable research.

HENRY G. COOPER.

The Colonial Policy of William III. 333

THE COLONIAL POLICY OF WILLIAM III. IN AMERICA AND THE WEST INDIES. By G. H. Guttridge. Pp. viii, 189. With three maps. 8vo. Cambridge: The University Press. 1922. 10s.

ONE of the chief difficulties of the student of colonial history is to find some central point of interest round which he can group the results of his investigations into the histories of the individual colonies. So great, indeed, has been this difficulty that it is only in comparatively recent times that it has been overcome; and it has been overcome solely by an ingenious shifting of the point of view—by studying the connection between the colonies and the mother countries. It is this point of view that gives unity and significance to the work of such writers as Professor C. M. Andrews and the late Mr. G. L. Beer, and in his Prince Consort Prize Essay Mr. Guttridge has produced a sound and useful study on the lines indicated by these two pioneers in colonial history. And Mr. Guttridge is a pioneer himself; for not only has he based his synthesis on a new and valuable line of approach to colonial history, but he has worked very largely on original manuscript material.

Starting from the fact that the English Revolution of 1688 was followed by local revolutions in New York, New England and Maryland, Mr. Guttridge proceeds to investigate the wider question of the influence of the Revolution on colonial affairs as a whole, and in particular the state of affairs produced in North America by the war with France that followed the Revolution. He gives a very clear account of the cumbrous and unsatisfactory working of the Navigation System bequeathed to the colonies by English statesmen of the Restoration period. Though his paragraph (pp. 170-171) dealing with the interloping Scots traders is an admirable summary of the position, his treatment of the Darien scheme is by no means satisfactory. 'Setting sail in the autumn of 1698 under a charter from the English government, stipulating certain conditions, the expedition finally settled at the isthmus of Darien and the English government began to realize the importance of the event,' he remarks (p. 171): to write thus is to miss the whole point of the English attitude towards the Darien Expeditions; these expeditions were fitted out in virtue of powers conferred by the Act of the Scottish Parliament constituting the Company of Scotland trading to Africa and the Indies; this Act was touched with the sceptre at Edinburgh on 26th June, 1695, and when the English Parliament met, in the following November, it lost little time in tackling what was considered a serious menace to English trade. It is a pity that Mr. Guttridge's treatment of the Darien Scheme is so perfunctory, for it came more closely into relation with William's personal interest in colonial affairs than anything else touched on in Mr. Guttridge's essay; we can indeed get his views on it with an intimacy and frankness found nowhere in any of Mr. Guttridge's references to him. 'Though I am very glad at being now relieved from embarrassment about the affair of Darien,' he wrote from Loo, on September 29, 1699, to the Earl of Portland, 'I pity with all my heart the poor Scotch, who have lost everything, and were by no means the promoters of this enterprise.'¹

¹ Grimblot, *Letters of William III. and Louis XIV.* vol. ii. p. 354.

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His treatment of the Darien episode, however, is the only weak part of Mr. Guttridge's work. Judged as a whole, his essay is a meritorious contribution to colonial history, and it has the distinction of being the first work by a British historian written with the object of linking up the years that saw the elaboration of the old colonial policy and the years that saw its downfall.

G. P. INSH.

ÉGINHARD, *Vie de Charlemagne*. Pp. xxiv, 127. Crown 8vo. Paris : Librairie Ancienne Honoré Champion. 1923. 7 fr. 50.

THIS is the first volume of a new historical series, *Les classiques de l'Histoire de France au Moyen Age*, undertaken by the publishing house of Champion, under the general editorship of M. Louis Halphen. This new enterprise is framed on the model of the well-known *Classiques français du Moyen Age*, and will provide reliable texts, with French translations, of the most important sources of French medieval history. The price of each volume, bound or unbound, is very moderate, and the *format* is all that could be desired. No library and no serious student can neglect what promises to be an important collection.

M. Halphen has proved his competence in the field covered by the first volume in his recently published *Études critiques sur l'histoire de Charlemagne*, which first appeared in the *Revue Historique*, and his edition is based on the lucid and trenchant examination of contemporary theories which is found there. His text is the fruit of a reasonable examination of the principal MSS., and his introduction is pointed and adequate.

DAVID BAIRD SMITH.

CITY GOVERNMENT OF WINCHESTER FROM THE RECORDS OF THE FOURTEENTH AND FIFTEENTH CENTURIES. By J. S. Furley, M.A. Pp. 196. With 7 illustrations. 8vo. London : Oxford University Press. 1923. 14s.

THIS book is an attempt to illustrate from the city records the life of medieval Winchester. Many aspects are touched upon with slightly overwhelming rapidity, but on the whole more fresh light is thrown upon questions of administration and government than upon those of economic organisation. One could have wished, for instance, for a more detailed examination of the intricate question of the Staple. The comparison of the offices of Mayor and Bailiff is particularly interesting, as is also the account of the relations of the city with the Bishop.

The book is a valuable survey, though many of the problems could be worked out further with advantage in their more general aspects. The book is attractively illustrated, and includes valuable transcripts from the city records. It gives a vivid impression of the intense if somewhat narrow life of a medieval city.

F. M. GREIR EVANS.

The Indictment of Mary Queen of Scots 335

THE INDICTMENT OF MARY QUEEN OF SCOTS AS DERIVED FROM A MANUSCRIPT IN THE UNIVERSITY LIBRARY AT CAMBRIDGE HITHERTO UNPUBLISHED. With Comments on the Authorship of the Manuscript and on its Connected Documents. By Maj.-Gen. R. H. Mahon, C.B., C.S.I. Pp. viii, 54. 8vo. Cambridge University Press. 1923. 5s.

THIS is a work of great importance to the large group of persons who follow the vicissitudes of the unfortunate Queen of Scots. It shows how unscrupulous those who attacked her were and how their 'evidences' against her changed from hour to hour. It has not been printed before, and the editor holds that it is an early form of the *Book of Articles* and based on George Buchanan's *De Maria Scotorum Regina*, and he deduces from the language with much probability that in this 'Indictment' we have a genuine addition to the vernacular writings of Buchanan himself (Sep.-Oct., 1568) copied by an English scribe. It contains much that was rearranged in the Hopetoun *Book of Articles*, which has, however, a more English flavour. The editor has wisely refrained from asserting his opinion of the Queen's guilt or innocence, and points out that 'The true story of the 'Gunpowder Plot' at Kirk o' Field has yet to be written,' but he has done a lot to show the variations in the accusations of her persecutors.

A. FRANCIS STEUART.

THE ANNUAL REGISTER. A Review of Public Events at Home and Abroad for the Year 1922. Edited by M. Epstein, M.A. Pp. xii, 316, 199. 8vo. London: Longmans, Green & Co. 1923. 30s.

THIS useful volume gives us a political history of England in four chapters to cover its period. They are 'The Decay of the Coalition,' 'The End of the Engineering Lock-Out,' 'Civil War in Ireland,' and 'The Fall of the Coalition.' Foreign and colonial history is as adequately dealt with, and a retrospect of Literature, Science, Law, etc., makes up a valuable reference book.

LES SOURCES DE L'HISTOIRE DE FRANCE: XVII^e SIÈCLE (1610-1715). Ed. Bourgeois et André. III. Biographies. Paris: Auguste Picard. 1923.

THIS is the third of the four volumes which form the third section of this collection. It contains bibliographical notes on the materials, contemporary and recent, for the biographies of almost two thousand worthies. The bulk of the names are those of secondary figures, and this fact gives the volume its special value. The editors provide concise summaries and estimates of most of the items.

THE BOOK OF THE OLD EDINBURGH CLUB. Twelfth volume. Pp. viii, 250; 61, with four folding plates. 4to. Edinburgh, printed by T. and A. Constable, Ltd., for the members of the Club. 1923.

THE Old Edinburgh Club is once again to be congratulated on its vitality. It is doing excellent work which the future historian will value highly.

336 The Book of the Old Edinburgh Club

The paper modestly described as 'Notes on the names of the closes and wynds of Old Edinburgh' by Mr. Boog Watson is a marvellous performance. It gives lists of some 335 closes in Old Edinburgh, and appended to each entry are notes which give details of the history of the close, and references to it in manuscripts or maps or printed books. These notes throw innumerable side lights on the daily life of Edinburgh, its gaieties, its trade, and even its crimes, while there is hardly a family of note (besides many long-forgotten), who is not referred to. Mr. Boog Watson, from his intimate acquaintance of the subject, might have been tempted to dogmatise, but like a true scholar he tells us when his researches have failed to clear up a point.

Equally interesting is a list of the maps of Edinburgh 1544-1581 by Mr. William Cowan. Unfortunately our forefathers did not trouble themselves to make detailed maps of cities. Blaeu in Amsterdam published his great Atlas before the middle of the seventeenth century where he had one large broadside sheet for each Scottish county, and to some counties like Lanarkshire he gave two complete sheets. These maps were perhaps not very accurate, but they gave the names of the villages and of many of the farm-holdings, such as they were. But it was nearly a hundred years later, in 1742, before we have the 'earliest trustworthy plan' of Edinburgh. It is to be hoped that the appearance of Mr. Cowan's list may call forth some additional maps, and it may be that amid hidden treasures some older one may be discovered.

The large measured drawings of the Lawnmarket and the Castlehill made by Thomas Hamilton and described by Mr. Mears are very well worth reproducing, in the folding plates which form the illustrations of this excellent volume.

THE OLDER UNIVERSITIES OF ENGLAND : OXFORD AND CAMBRIDGE. By Albert Mansbridge. With nine drawings by John Mansbridge. Pp. xxiv, 296. 8vo. London : Longmans, Green & Co. 1923. 7s. 6d.

THIS is an essay on the Universities of Oxford and Cambridge by one who was not a student of either university. It gives their history from their foundation, but the keynote of the volume is to be found in the author's statement (p. 181) that 'if the Universities are to become even a shadow of what they might be in the twentieth century they must permeate the very minds and hearts of working men and women.' Mr. Mansbridge has been keenly interested in the work of University Extension Lectures, the University Tutorial Class Movement and the Workers' Educational Association, and is very anxious to see the Universities adapt themselves 'to a democratic age.' This is not the place to discuss educational problems, but with the recent growth of universities and colleges throughout England, much could be urged on behalf of the older universities of Oxford and Cambridge devoting themselves to the higher study of the Humanities and to research in science. In the general desire to broaden the basis of education, one is apt to forget the immense importance to the whole community of the most advanced studies of the few.

FRENCH PARTIES AND POLITICS. *The World of To-day.* By Roger H. Soltau, M.A. Pp. 80. Cr. 8vo. London : Oxford University Press. 1922. 2s. 6d.

WE have here a useful account of the French constitution and a resumé of the history of the political parties in France which have been the result of its changes in government, from Royalist, Republican, Constitutional, Imperial, and Republican again. In this way one can understand the different sections and cliques to the present time.

SCOTTISH KINGSHIP : ITS ANTIQUITY AND CONTINUITY. By Sir John Lorne MacLeod, G.B.E., LL.D. Pp. 19. Cr. 8vo. Edinburgh : T. & T. Clark. 1923. 1s.

A PLEASANT little study has been written here on the long line of Scottish kings, and stress is laid more on their continuity than on the two interruptions to the strict line of descent by the successes of the Bruce line and their descendants against the Balliols and the Guelphs against the Stuarts. It points out, however, that 'Cromwell's crowning mercy' of the Battle of Worcester in 1651 meant the loss of the flower of Scotland in its struggle for the assertion of Kingship.

THE TREND OF HISTORY ORIGINS OF TWENTIETH-CENTURY PROBLEMS. By William Kay Wallace. Pp. xxii, 372. 8vo. London : Macmillan & Co., Ltd. 1922. 16s.

THIS is a very interesting study of modern history. The author holds that, politics being no longer dominant, history must be looked at in a new way and must 'be approached from an institutional, not from an individual or national standpoint.' 'To trace through the tangled maze we call the course of events, the logical antecedents and coefficients thereof, is to discover the trend of history, the process of social life. Such is the purpose of this volume.' And it is a volume very well written and constructed. The rise of public opinion is traced and then the rise of Nationalism, which was so much influenced by Napoleon. We follow the convulsive years that followed his downfall, the increase of French Nationalism under Napoleon III., and the rise of Germany through the crooked policy of Bismarck. Nor does he neglect the waves of revolutionary thought, communism and autocracy, which all played their parts, as did the ideals of the Super-State and cultural superiority, both vitiated by the justification of the use of force. The book must be read by all students of modern history.

THE 'ABERS' AND 'INVERS' OF SCOTLAND. By the late Erskine Beveridge, LL.D. Pp. xx, 128. 8vo. Edinburgh : William Brown. 1923. 8s. 6d.

MRS. BEVERIDGE has decided wisely in permitting this manuscript of her husband's to be published. The work was almost completed and the preface written at the time of his death.

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338 Beveridge : Scottish 'Abers' and 'Invers'

All the place-names containing Aber or Inver, as prefix or suffix, in Scotland are tabulated, with useful and scholarly notes on their locality, and the occurrence of the name in its various forms in old or more recent manuscripts and printed works. It is often the case that writers on place-names assume much and leave the reader in doubt as to how far he may safely rely on what he is reading. Dr. Beveridge's work has not this failing. He writes with the reserve of the true scholar, and is well aware that in pioneer work of this sort his suggestions may be either confirmed or rejected by the researches of future workers. Both by the short introductory essay and by the comments throughout the work, he has added greatly to the value of his lists. The subject is necessarily a very limited one, but it is a pleasure to see a piece of work so excellently carried out as this has been.

SHAKESPEARE, THE MAN AND HIS STAGE. By E. A. G. Lamborn and G. B. Harrison. Pp. 128, with 27 illustrations. Crown 8vo. London : Oxford University Press, Humphrey Milford. 1923. 2s. 6d.

THIS is a charming book, which will interest both the Shakespeare student and the general reader. It deals with Shakespeare's life and times, the theatre in his day, and his plays. The pictorial illustrations are well chosen, but equally illuminating are the extracts from contemporary writers. The series, of which this volume is part, is designed to provide 'authoritative and scholarly work, presented in terms of its human interest, and in a simple style and moderate compass.' This volume fulfils this aim.

EGYPT AND THE OLD TESTAMENT. By T. Eric Peet. Pp. 236. 8vo. With two maps. London : Hodder and Stoughton, Ltd. 1922. 5s.

THIS is obviously written to correct the unbounded zeal of the earlier commentators who identified every Egyptian name mentioned in the Old Testament with names found in Egyptian records. The writer, while not denying the sojourn of the Hebrews in Egypt, points out a thousand difficulties in the easy identification of names used by them, the nature of the Hebrew alphabet without vowels, the difficulties of hieroglyphics, our ignorance still of much Egyptian history, and the difficulties of Hebrew chronology. The result is this suggestive book. The most is naturally occupied by conjectures on the sojourn and the Exodus; then comes the question, 'Can we identify the Khabiru with the Hebrews?' Solomon's connection with Egypt is afterwards considered, and the later history ends with an interesting chapter on the very late Jewish colonies in Egypt and the Temple built there by the High Priest Onias. The book is not very constructive, but it tries to assist both Egyptologists and Biblical scholars.

GABRIEL HARVEY AND THOMAS NASHE. By the late Edward George Harman, C.B. Pp. xii, 275. 8vo. London : J. M. Ouseley & Son, Ltd. 1923. 12s. 6d.

THIS is rather a perplexing work. The author—who is dead—seems to have been one of these perfervid Baconians who stick at nothing, with the

result that every Elizabethan work of even slightly uncertain origin is ascribed to Bacon. Everything therefore becomes bewildering and often topsy-turvy, and the writer's wildness is only mitigated by the sane reader's discounting many of his theories.

The reader has to weigh the worth of the constant iteration of 'In my opinion' in regard to many interpretations for which no reason is given. The writer sacrifices Lyly, Green and Nashe to Bacon. Spenser too is somewhat merged in Bacon. In fact the whole literary criticism becomes a personal view which has not a great deal to connect it with historical evidence.

THE CONTINENTAL SYSTEM, AN ECONOMIC INTERPRETATION. By Eli F. Heckscher, D.Phil. Edited by Harald Westergaard. Pp. xvi, 420. Large 8vo. Oxford : at the Clarendon Press. 1922. 10s. 6d.

THE author begins his book with this sentence : 'The Continental System is a unique measure to which a country resorts for the purpose of crushing a political enemy by economic means, and at the same time building up its own commercial and industrial prosperity to an extent previously undreamt of,' and goes on to elaborate his study by showing how this economic struggle began between France and England after the French Revolution. Napoleon continued it as a policy, and might possibly have been successful but for the defection of Russia. We are led into many interesting historical alleys, the position of the Hanse towns, Denmark, Sweden, Norway and Holland ; the position smuggling took up and how the blockade was evaded. All this has of course an added interest since the last Great War, when blockade was again used as a means of reduction of an enemy. Valuable chapters are added showing the effects the blockade had on the continental countries. The book is published by the Carnegie Endowment for International Peace, which shows the aim of the work.

HISTORY OF JAHANGIR. By Reni Prasad. Allahabad University Studies in History. Vol. I. Pp. xx, 501. With illustration and map. 8vo. London : Oxford University Press. 1922. 17s. 6d.

It is a pleasure to add this book to one's library of Indian history. The son of Akbar has been a little neglected by historians on account of the greatness of his father and his rebellion against him. Here we study his life from birth to the tomb, the influence of his Rajput mother and his wives. The last of these, Nur Jahan, was the subject of a wonderful romance. Sprung from adventurers from Khorasan, she did not marry the Emperor (this book clears him from the scandal of her first husband's death) until her thirty-fourth year, which is old in the East. After which she was the paramount power, ruled Mughal India with her husband's consent, and tried, at great cost, to regulate the succession. She failed in this, and survived her husband eighteen years, living privately 'in sorrow.' The book has a valuable account of Mughal administration.

History of the Berwickshire Naturalists' Club, vol. xxiv. part iv. (Edinburgh: Neill & Co.) has *inter alia* articles on Kirknewton circa 1715; Notes on Dryburgh Abbey; Chirnside Common, by J. H. Craw; The Raven in the Lammermoors; The Seals of Coldingham Priory, by Charles H. Hunter-Blair, and an account of Charles S. Romanes, who did much towards the excavations in the precincts of that old priory.

Proceedings of the Somersetshire Archaeological and Natural History Society. 1922. Vol. lxviii. This well-illustrated part contains papers on 'The Ethnology of Somerset from the Neolithic Age to the close of the Roman Dominion,' by the Hon. Prof. Sir William Boyd Dawkins; 'Fitzurse,' by Sir Henry C. Maxwell Lyte; and 'The Brue at Glastonbury.'

In the *English Historical Review* for January M. Previté-Orton concludes his valuable study of Marsiglio of Padua with an account of his doctrines. Miss Helena M. Chew concludes her review of Scutage in the Fourteenth Century, and Professor Pollard deals with the Privy Council under the Tudors. Mr. R. L. Poole contributes an interesting note on the English Bishops at the Lateran Council of 1139, and Miss Dorothy M. Broome deals with the Auditors of the Foreign Accounts of the Exchequer, 1310-1327, furnishing a detailed list. Mr. Robert F. Young furnishes some notes on Bohemian scholars and students at the English Universities, 1347-1750. The number contains the usual quota of well-informed reviews.

The number for April contains among its *Notes and Documents* Commander H. D. Warburg's comments on 'Caesar's First Expedition to Britain.' The Rev. Paul van Dyke, D.D., contributes a letter of Catherine de Medicis to Mary, Queen of Scots, and F. A. Middlebush an article on Charles II. and Louis XIV. in 1683.

In *History* for January, Professor Seton-Watson writes on 'Roumanian Origins.' He summarizes with full knowledge the facts which are generally admitted, and points out that on this subject of acute controversy the straw from which the historian is expected to construct his bricks is unusually scanty. Professor Watson concludes that the Roumanian claim of pure Roman blood is untenable. He finds that 'it is safe to say they are Roumanised Dacians' with a mixture of Slav and to a lesser degree Tatar blood. Professor A. F. Pollard pays a graceful tribute to Lord Bryce in a review of 'Modern Democracies,' and Rear-Admiral H. W. Richmond writes an appreciative notice of the late Sir Julian Corbett, and emphasizes the blank among historians of naval warfare which his death has caused. Appended is a useful little bibliography of Sir Julian's chief works and articles. The Rev. B. D. Reed, in an informing article on 'Philately and the Teaching of History,' shows how the confused history of Europe during the last sixty or seventy years may be rendered more definite and vivid by a study of the varied postal issues. Mr. G. N. Clark, under the 'Historical Revisions,' discusses the Navigation Act of 1651, concluding that it was the work of a small body of interested persons, did little good to England and no great damage to Holland.

The reviewing of recent historical works is, as usual, an important feature, and a new departure is made by some pages devoted to University research. Lists of theses and publications accepted for higher degrees, and essays by graduates awarded University prizes during the preceding session are given.

In the number of *History* for April the chief articles are 'The Place in the Middle Ages in the Teaching of History,' by Professor Tout; 'Recent Text-books on the History of Greece and Rome,' and especially a 'Historical Revision: the Great Fire of London,' by Miss G. Jeffries Davies. She quotes Mr. Bell who says that, apart from Wren's buildings, London recreated after the fire 'owed more . . . to King Charles II. than to Sir Christopher Wren.'

The *Antiquaries Journal* for January, 1923, opens with a description by Sir Martin Conway of the Reliquary of St. Radegund preserved at Poitiers, the earliest dated and authentic piece of Byzantine enamel. Lt.-Colonel Hawley presents a somewhat disappointing report on the progress of the excavations at Stonehenge. Other articles deal with English Medieval Alabaster Carvings (Hildburgh), and the Siege of Berkhamstead Castle in 1216 (Kendall). The number contains numerous illustrations and plans, which greatly increase its value.

The Juridical Review. Vol. xxxv. No. 1 (March, 1923). The leader in this excellent review is 'The Centenary of the Entail,' by William Roughead in his inimitable manner, an article which ought to make readers fly to Galt's masterpiece again. Lord Strathclyde writes on 'The Lawyer as Parliamentarian,' and Hugh R. Buchanan on 'Some Aspects of the Royal Prerogative'—an echo of the Tudor and Stuart times.

In the number for June, 1923, Lord Sands contributes an article on 'Lord Justice-Clerk Macdonald and his Edinburgh.' Mr. Roughead continues the struggles of the unfortunate and fiery Mr. Kirkwood, who fought the 'Twenty-seven Gods of Linlithgow,' in 'Mr. Kirkwood and the Kirk,' and Mr. T. B. Simpson has an account of Governor Wall, who had a man flogged to death at Goree and was hanged for it twenty years later.

Proceedings of the Royal Irish Academy (Volume xxxvi. section C). T. F. O'Rahilly has compiled a curious list of 'Irish Poets, Historians, and Judges in English Documents, 1538-1615,' a time when the English government looked upon the Irish *literati* with 'particular disfavour.' Most of the names come from the time of Elizabeth and the Patent Rolls of James I. St. John D. Seymour gives an account of 'The Book of Adam and Eve in Ireland,' from the little-known poem *Saltair na Rann*, and E. C. R. Armstrong and R. A. S. Macalister on 'Bronze Age finds in Ireland.' In the *Proceedings* (January) Dr. John D. Seymour had a paper on the signs of Doomsday in the *Saltair na Rann*, and compares them with those in the *Blickling Homilies*. In the February number Patrick Power wrote on the place-names and antiquities of County Cork, dealing with the Barony of Barrymore, and Herbert Wood on 'the Office of Chief Governor of Ireland, 1172-1509.' It commences with Richard de Burgh, Earl of Ulster, in 1308.

Professor Haskin's presidential address upon 'European History and American Scholarship,' delivered in December before the American Historical Association, is the leading article in the January issue of the *American Historical Review*. It is a weighty survey of both achievement and shortcoming, emphasizing towards its close the truth that 'the historian's world is one,' urging him to 'interpret it as one in relation both to scholarship and to the moulding of public opinion.'

'The London Mission of Thomas Pinckney, 1792-1796,' forms the second paper, and in it Mr. S. F. Bemis sketches the mission to the Court of St. James of the first minister of the United States. Pinckney, a native of Charleston, South Carolina, had received his education in England, at Westminster School and Oxford University, and had finished his studies as a lawyer at the Temple. His was accordingly an excellent selection by George Washington, for he was a *persona grata* to the British Court and people. Lord Grenville, Secretary of State for Foreign Affairs, being upon his honeymoon, the new minister was presented to the King by Henry Dundas, Home Secretary. His mission here lasted four years, and his activities were chiefly directed towards attempting to settle the dispute between the two nations over the thorny subject of impressments. The press-gang in British ports and on the high seas was used in a way that led to constant protests from the young American Republic. Pinckney found the British Government determined to retain the right, in the words of Lord Grenville, 'to take its own subjects found on board of a foreign vessel on the high seas for all the purposes for which they are liable to be taken by any act of its legal power and discretion.'

Professor A. Presniakov details the present and pressing obstacles to Historical research in Russia. After great havoc, the organization of the archives is being attempted. 'The Accounts of a Colonial Governor's Agent in the Seventeenth Century,' edited by C. G. G. Higham, disclose items of interest and importance, throwing light on the duties and activities of the early colonial agents. They have been carefully edited by the author of 'The Development of the Leeward Islands.'

Reviews of Books and Historical News complete a very interesting issue.

The American Historical Review for April, 1923, contains an instructive article on 'German Feudalism,' by James W. Thomson, and a paper by Reyev B. Merriman on Charles V.'s last paper of advice to his son, which contains the direction: '*Guardad paz con Francia todo lo que pudieres, pero no perdays jamas la amistad de Inglaterra.*'

Queen's Quarterly (October, November, December, 1922) is printed at Kingston, Ont., and contains excellent articles on current foreign politics. C. W. Stanley contributes an article on 'Intolerance in New Countries,' Vincent Massey one on 'The Prospects of a Canadian Drama,' and W. M. Conacher one on 'Ireland in 1922.'

In *Bulletin* (No. 44) of *Queen's University*, under the title of 'The Faculty of Arts and Business Training,' Mr. J. M. Macdonell urges that in Canada the Arts Faculty is declining chiefly because of the slide of study to 'vocational' themes of inadequate plane. To this Mr. W. C.

Clark replies, not over effectively, that the professional practical training carries with it all the best potentialities of liberal culture too.

The Iowa Journal of History and Politics for April, 1923, contains an elaborate history of the Military Department of the State University of Iowa. It begins in the Civil War and is carried down to the Great War.

In the *Revue Historique* for November-December, 1922, M. Pierre Bertrand concludes his examination of the MSS. of the *Mémoires* of Cardinal de Richelieu. His story is important, not only on account of the interest of the subject, but also as offering a good example of sound methods of criticism of the material of history. The *Bulletin Historique* is devoted to Assyrian studies, and among the books reviewed is Gathorne-Hardy's *The Norse Discoverers of America*. M. Guignebert contributes an interesting and judicious biographical sketch of Mgr. Duchesne; M. Pfister pays a tribute to Lavissee; and the death of Paul Guilhaumoz, an influential if secondary figure in the French historical school, is noted by P. Couderc.

The number of the *Revue Historique* for January-February contains the conclusion of M. Walty's *Les artisans et leur vie en Grèce*, and a study of rural industries in eighteenth century France by M. Sée. The *Bulletin historique* is devoted to publications on Latin America during the ten years prior to 1914, and to publications on the history of France from 1660 to the Revolution. Among the books reviewed are Vinogradoff's *Outlines of Historical Jurisprudence* and Taylor's *Wars of Marlborough*.

The March-April number includes an article by M. Lizerand on Philip the Fair and the Empire, 1285-1291, and a correspondence between Mm. Lovollée and Bertrand, following on the latter's study of the *Mémoires* of Richelieu. The *Bulletin historique* deals with publications on the history of France in the sixteenth and early seventeenth centuries. Among the books reviewed are English and American publications on International Peace. The death is announced of M. Roland Delachenal, the learned historian of Charles V.

The most important contribution to the May-June number is an illuminating study of the *Capitulare de Villis* by M. Bloch. The *Bulletin historique* surveys French nineteenth century and contemporary history, and the reviews include notices of Burkett's *Early Cultures in Europe* and Sanders' *Bossuet*. Reference is made to the deaths of Frédéric Masson, Mathorez and Joseph Tardif.

D. B. S.

The *Revue d'Histoire Ecclésiastique* for October, 1922, contains J. B. Bord's *L'autorité de saint Cyprien dans la controverse baptismale jugée d'après saint Augustin* (St. Cyprian did not dispute the authority and primacy of Rome, and St. Augustine demonstrates this); Dom. Chapman's *Pélage et le texte de S. Paul* (an examination of the writings of Prof. Souter and Dom. D. de Bruyere on the Commentary of Pelagius), and a further instalment of P. de Ghellinc's study of Richard de Bury. Among the books reviewed are Lake's *Apostolic Fathers*, Mayor and Souter's *Tertulliani Apologeticus*, and Butterworth's *Clement of Alexandria*. The number contains the usual valuable bibliography.

D. B. S.

THIS PART completes the twentieth year of publication of the Scottish Historical Review.

With the first part appeared a statement of its aims, from which the following is extracted :

‘The general scope will be to cover the wide field of History, Archaeology and Literature with more particular reference to Scotland and the Borders, and with a special regard to the many common features of British national and social evolution.

The broader issues of history and literature will be kept prominent. The long drama of folk-lore; the development of institutions, social, political, ecclesiastical, and commercial; the study of Heraldry and Genealogy; and the various manifestations of national individuality are themes of interest which merit a recognised and national medium.’

The Editor has endeavoured to fulfil these aims. While he is conscious of mistakes which have been made, his chief feeling is one of sincere gratitude to the contributors, more than four hundred in number, who have generously given of their scholarship to make the Review a success. Some of those who wrote for the earlier numbers are no longer with us, and among them—devoted friends of the Review—are Andrew Lang, T. G. Law, Sir Archibald Lawrie, Joseph Anderson, J. Maitland Thomson, Bishop Dowden, Archdeacon Cunningham, Canon Wilson and Sir Walter Raleigh.

The Editor begs to tender to all the contributors very cordial thanks not only for their papers, but for innumerable acts of kindness during the last twenty years. Of those who are still writing, he would mention only one name, that of George Neilson, LL.D., from whom some contribution has appeared in practically every number. Much of his work has been unsigned; but even if his name had been appended to all that he wrote, this would have conveyed a very inadequate idea of all that he has done towards securing any measure of reputation which the Scottish Historical Review may have achieved.

JAMES MACLEHOSE
Editor

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